Supreme Court, U.S.
FILED

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In The
SUPREME COURT OF THE UNITED STATES

CARMEN T. ROSSO
DESCARTES A/K/A/ CARMEN ROSSO DE IRIZARRY

Petitioners

PUERTO RICO GOVERNMENT BANK FOR LAND USE ADMINISTRATION; DEPARTMENT OF TRANSPORTATION AND PUBLIC WORKS; DEPARTMENT OF HOUSING; PLANNING BOARD; RULES AND PERMITS ADMINISTRATION, ET AL.

Respondents

Petition for Writ of Certiorari to the
Supreme Court of the Commonwealth of Puerto Rico

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I. WHAT HAPPENS WHEN THE GOVERNMENT'S ORIGINAL LEGITIMATE AND RATIONAL JUSTIFICATION TO CONDEMN PRIVATE PROPERTY (WITHOUT SPECIFIC GUIDELINES TO SAFEGUARD AND PROTECT PRIVATE PROPERTY HOLDERS FROM THE QUASI AUTHORITARIAN POLICE POWERS OF THE STATE) BECOMES ILLEGITIMATE, IRRATIONAL, ARBITRARY, AND SUSPICIOUS UNDER THE SCRUTINY OF THE 5TH AMENDMENT AND 14TH AMENDMENT OF THE CONSITUTION? IS SAID STATE ACTION NULL AND VOID AB INITIO?

II. DOES THE EXECUTIVE BRANCH OF GOVERNMENT HAVE THE CONSTITUTIONAL AUTHORITY TO UNILATERALLY AMEND THE DEFINITION OF A PUBLIC USE FOR THE PURPOSE OF CONDEMING (WITHOUT SPECIFIC GUIDELINES TO SAFEGUARD AND PROTECT PRIVATE PROPERTY HOLDERS FROM THE QUASI AUTHORITARIAN POLICE POWERS OF THE STATE) THE AFFECTED PRIVATE PROPERTY WITHOUT BEING SUBJECTED TO ANY FORM OF JUDICIAL REVIEW OR SCRUTINY UNDER THE PUBLIC USE STANDARD TO JUSTIFY THE TAKING OF PRIVATE PROPERTY UNDER BOTH THE FIFTH AND OF THE FIFTH AND THE FOURTEENTH AMENDMENT AMENDMENT OF THE UNITED STATES CONSTITUTION?

A. PETITIONERS DUE PROCESS HAS BEEN VIOLATED BY THE SUPREME COURT WHEN SAID COURT DENIED TO RETAIN A MANDATE AND INSTEAD ISSUED SAID MANDATE PREMATURELY IN CLEAR VIOLATION OF ITS LOCAL RULES AND DENYING PETITIONERS DUE PROCESS RIGHTS TO STAY SAID LANDS PENDING THIS COURTS RESOLUTION OF PETITION FOR WRIT OF CERTIORARI

PARTIES TO THE PROCEEDINGS

Petitioner, who was the Plaintiff below, is CARMEN T. ROSSO DESCARTES A/K/A CARMEN ROSSO DE IRIZARRY.

Respondents, who were Defendants below, are the Puerto Rico Development Bank Land Use Administration; the Department of Transportation & Public Works; The Department of Housing; The Planning Board; The Rules & Permits Administration of the commonwealth of Puerto Rico.

RULE 29.6 DISCLOSURE STATEMENT
None of the Petitioners is a corporation.

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STATEMENT OF JURISDICTION

The decision and judgment of the Superior Court was entered on August 26, 2005. The corresponding motion for reconsideration filed by the Petitioners was denied on January 30th, 2006. The denial of Petitioners request for certiorari before the Supreme Court of the Commonwealth of Puerto Rico was entered on January 27th, 2006 and notified on January 30th, 2006. This Court's jurisdiction is invoked under **28 U.S.C. § 1257(a)**

PROCEEDINGS BELOW

The decision of the Supreme Court of Puerto Rico of which review is sought is reported at case number CC-2005-427 and reproduced in the Court of First Instance Appendix, Annex D and E. The decision of the Superior Court of Puerto Rico, Judicial District of Bayamon, is reported and reproduced in the Appendix at App. 191-424.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case directly involves the public use provision of the Takings Clause of the Fifth Amendment and the Due Process provided under the Fourteenth Amendment of the United States Constitution. The statute involved is the Puerto Rico Land Administration Act, Act Number 13 of May 16, 1962, Act Number 12 of December 10th of 1975 and the General Condemnation Act.

CONDENSED STATEMENT OF FACTS

Mr. Jorge Rosso, was the rightful owner of 337.7225 *cuerdas*[1] (approximately 2398.70803 square meters) in Puerto Rico, it was one of the largest estates in Puerto Rico at that time and it included portions from the district areas of Barrio Juan

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[1] **One '*cuerda*' is approximately 7.102600617215995 square meters. See Amended Complaint, Volume II of the Appendix, 2000-2078. See also item 15 of the Comparative Chart. Mr. Rosso's Estate constitutes 0.026% of the total land area of the Commonwealth of Puerto Rico.**

Sánchez in the Municipality of Bayamón, as well as portions of Barrio Santa Clara and Los Frailes in the Municipality of Guaynabo, all these portions were separated by State Road 177 (also known as Los Filtros Avenue). These parcels were publicly known in Puerto Rico as the Rosso Estate. None of the these parcels were developed or blighted, nor were ever, as of today's date subject of any type of public housing or for all practicable matters said properties were never subjected to any of the public interest uses that were originally and vaguely established to justify condemning the Rosso Estate.

On August 29, 1962, the Land Administration Agency for the Commonwealth of Puerto Rico, submitted to the Consideration of the Puerto Rico Planning Board ("The Board"), a project for the integral development of the metropolitan area of San Juan, requesting the Board to approve the project for the acquisition of lands to carry out a rather general and highly vague and ambiguous development plan. Said Plan proposed to carry out works of a public nature and all other programs germane to the Land Administration Act. As an integrated project, its purpose was: "to make ready new areas for urban development of the Metropolitan Area under conditions that would secure the best balance between the necessities of the future communities of the area, under the standards of the Act, in order to secure the best conditions of health, safety, comfort, recreational facilities and other essential services."

As was expected at the time, the Board approved the project, but before doing so, adopted the following standard: That it would not acquire lands having a preliminary development in good faith, approved or under consideration of the Planning Board as of the date on which the bill which later became the Act creating the Land Administration was filed and approved into law, stating that good faith could be shown by acts which evidenced an intention to carry out immediately or in the immediate specific future the approved development and stating that prima facie any scheme of development filed in the Planning Board after approval of the Administration Act would **not be** considered to be in good faith. In general terms, the Chairman of the Planning Board stated that the Rosso Estate would be acquired apparently rationalizing that because the properties formed part of a contiguous area, they could somehow not be developed independently of the area which surrounds them, and that with their acquisition the area would be integrated so as to accomplish an orderly plan of development and which would permit the Government to develop low-cost housing.

The purpose of said Act as stated by the Governor of Puerto Rico on the bill that would later become what is known as Act No. 13, was the following: a) to curb the reckless rise in land prices; b) to eliminate the practices of speculation in lands which only benefit a few to the prejudice of the totality of the growing population; c) to assure the development of housing at low and moderate costs for families which do not yet have their own homes; d) To insure a reasonable cost for the lands necessary for industrial and commercial purposes which are considered indispensable for the life and progress of Puerto Rico; e) to insure the creation of an inventory of land for all public works that may be realized in at least **ten years**; and f) to insure that the growth of our cities respond to the greatest general good.

It is important to mention, and as this Court can take judicial notice of said fact pursuant to Rule 201 of the Federal Rules of Evidence, that it is an undisputed fact that as of today's date, the local government has still failed to adopt and implement a comprehensive and specific Plan for Land Use when said concerns where raised in the present case approximately forty years ago. In fact, public hearings held regarding the necessity of adopting the above plan.

The Commonwealth of Puerto Rico acquired the Rosso Estate by condemnation on December 5th of 1963. See. *Commonwealth of Puerto Rico vs. Rosso,* 95 D.P.R. 501 (1967), (also known as ELA v. Rosso). As a result from the gap created by the previously mentioned State Road 177, the Northern portion of the estate remained with 71 cuerdas and the Southern portion with a land stock of 137.9515 *cuerdas*.

On April 12th of 1971, the Puerto Rico Superior Court in the Municipality of San Juan established that just compensation for said lands was approximately $8,096,856.56.

In February 24, 1975, following various years after the condemnation of the Rosso estate, and once the Office of the Administration of Lands (herein, AL) issued the payment for the Commonwealth, Justice Dan F. Rodriguez, the judge who presided the Taking proceedings at the Superior Court passed a Joint Resolution for cases #E63-1652, 1655 and 1656 that arranged the title registration of the Rosso Estate to the Administration of Lands. During the above period of time, said government authority or agency became the Rosso Estate possessor. It is of extreme importance to mention, that the AL never executed any order for the cease of use of public property regarding the now expropriated estate, nor did said agency take any action whatsoever for development or otherwise, on the estate **during the 15 years period provided under its own Law[2].**

On January 14th of 1982, the Office of the Administration of Lands sold a portion of the Rosso Estate to the Urban Renewal and Housing Corporation (hereinafter "CRUV"). The same day said transfer took place the CRUV proceeded to **segregate** and sign off in 1985 what would become the first of a long list of contracts and deeds by which a portion of the Rosso Estate would be sold off to a private developer, case in point, Casa Linda del Sur Associates, S.E. As of today's date, it is still unknown if any anti-inflation or anti-speculation steps were required by the Law when the AL was created, and as thoroughly discussed by the Puerto Rico Supreme Court in *ELA vs. Rosso*, *supra*, if they were carried out during the purchase agreement and all other agreements that followed this first purchase[3], due to the fact that there is no evidence that these steps were being carried out from the discovery that was originally ordered by the Puerto Rico Superior Court. In the instant case, most discovery orders were intentionally disrupted by and almost totalitarian government that insisted in disrupting at all cost all discovery of Torts through many times by the writs of certiorari filed by the Government. Consequently, it is not known up to this date the when's, how's, and which restrictions were properly and constitutionally imposed by the Government, if any, as a condition for the development of the Rosso Estate in order to guarantee that the purpose of the AL Law[4] and the alleged public interest pursued by such arbitrary and by now suspicious condemnation was actually carried out by the local Executive Branch, as determined by the local Supreme Court in ELA vs. Rosso, *supra.*

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[2] See Laws of Puerto Rico Annotated, 23 LPRA, Sec. 311 f (q).

[3] It is important to point out that Plaintiff-Petitioner, in this moment of its lawsuit, did not initiate any type of legal or administrative proceedings to invalidate previous sales related to housing developments built on the many other parcels or segregated portions of the condemned Estate. We remind this Court that null condemnation actions are rendered void and can never be ratified. All laws which are repugnant to the Constitution are null and void, see *Marbury v. Madison*, 5 U.S. (2 Cranch) 137, 174, 176 (1803). The only portion of these lands that are the real object of the lawsuit is that portion acquired by the BGF (Puerto Rico Development Bank for Land Use Administration) that is still undeveloped and described herein, as well as those portions now owned by the Bayamón municipality, described in the Amended Complaint (Volume II of the Appendix, 2020) which are also undeveloped.

Again in a highly arbitrary and suspicious manner, on July 3, 1985, after ten years had transpired after the original takings had been effected and 22 years after the term limitations had been established in Act 13, the AL transferred the remains of the Rosso Estate to the CRUV. Moreover, and to further illustrate the arbitrary and suspect actions of the Executive Branch. It was not until March 5th of 1996, **thirty three years after the condemnation of the Rosso Estate,** that respondent, The Planning Board adopted a "Conceptual Master Plan for the Community of the Northern Area of Bayamón (hereinafter the "Master plan"). Said Plan, in basic terms was a global development concept for the sector where the remaining parcels of the Rosso Estate are located. The case that was presented in the Superior Court of Puerto Rico concerns these particular parcels, which total 29.73169 cuerdas. In December 30, 1997, OLCRUV handed over and transferred to the BGF the remains of the Rosso Estate that were still undeveloped after 34 years.[5] That transfer was made as part of the set-off of a debt that the CRUV had with BGF which never made any reference to any legitimate and rational public interest to justify said government action.

In March 22, 2000, in a public document numbered as Six by notary public Guillermo R. Picó Gómez, Esq., Respondent BGF segregated the new land that had been acquired, and sold three parcels to Mora Development, S.E., one of the largest if not the largest, private construction and real estate development companies in Puerto Rico, ("Parcel 1-A"; "Public Parcel", and "Parcel 1-B"), which land extensions totaled 29.73169 *cuerdas* approximately.

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[4] See Legislative Introduction of Puerto Rico Act Number 13 of May 16, 1962, 23 LPRA section 311, et seq.

[5] See Volume I of the Appendix, 820-828.

There exists no statement of cause or any other relevant reference to "public interest" development in which any type of inference could be made to assure that a public interest restriction that was mandated by Act 12 of the 10th of December, 1975 (28 L.P.R.A. Sec 31 ET SEC) was imposed to the buyer during the title transfer.[6] For a description of the above mentioned remainder of what once comprised the Rosso Estate, after the process of segregation, and purchase agreement please refer to Amended Complaint.

It is important to note, that the above lands belong to BGF and that **none of these lands had ever underwent any sort of developments private or public interest oriented whatsoever**. The above-mentioned remainder of the Rosso Estate became the object of this lawsuit in The Puerto Rico Superior Court when on August 21, 2000 BGF published an auction notice in one of the Puerto Rico's general circulation newspapers requesting offers of proposal from interested buyers. [7] Before the publication of the auction notice, and to this date, neither a communication nor a resolution from BGF, OLCCRUV, CRUV, or the Commonwealth nor its agencies or instrumentalities was ever sent or addressed to the representative of the Rosso Estate informing the same of the fact that BGF would be transfering the remainder of the Rosso Estate, as prescribed by the Law for the Selling of Public Lands, Act No. 12 of December 10, 1975 (herein, Act 12), 29 LPRA sec. 31 et seq., and its sections 31(d) and 31(e), and the Act No. 13 of May 16, 1962, 23 LPRA sections 311, et seq. (herein, Act 13), and its section 311m (g). It is important to note that at this particular point in time the representatives of the Rosso Estate were and continue to be at present the heirs and successors in interest of the original owners of the Rosso Estate.

In October 30, 2000, and due to the actions taken by BGF and the publication of the aforementioned auction notice, Plaintiff-Petitioner, Mrs. Rosso, filed a Motion for Declaratory Judgment[8] in the Puerto Rico Superior Court, amended later, originally suing

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[6] See Volume I of the Appendix, 834-849.

[7] See Volume II of the Appendix, 2068 (Amended Complaint). The Municipality of Bayamon followed suit with parcels transferred gratuitously in December 22, 2000, after the General Elections and after the date the original Complaint of this case was filed.

[8] See Volume I of the Appendix, 53-78; see also item 46 of the Comparative Chart.

BGF and other unidentified persons as defendants for the reasons that were stated herein. We feel compelled to remind this Court that it is petitioners contentions as they shall soon be demonstrated, among others, that the original taking falls with the category of state action that renders any type of taking that is both illegitimate and irrational as null and void *ab initio*. Said actions can never be ratified and are subject to the vast equitable powers of this court to rescind said illegal acts and return all parties to their respective original state.[9]

In the lower Courts petitioners Requested a Declaratory Judgment alleging that the public use sought in order to condemn the Rosso-estate had not been upheld, they alleged to have a Right of First refusal over the Rosso Estate pursuant to the Selling of Public Lands Act, Act 12 of December 10th, 1975 (29 LPRA §§ 31 et sec) and alleged that the mere fact that the condemnation was allowed **because of the existence of a Development Plan was insufficient to find basis for the condemnation under the Public Use Clause if the alleged public use was a subterfuge to sell said property to private enterprises and/or if the public use was never upheld.** (The above are presently the type of arbitrary and suspicious conduct under the Police Power of the State that Justice Kennedy addressed in his concurring opinion in the case of *Kello v. City of New London*, 125 S.Ct. 2655 (2005).

Petitioners respectfully requested that the referred to original condemnation be declared null and void under the Public Use Clause, that rescission as an equitable remedy be granted and that petitioners be duly compensated for compensatory damages since the Rosso Estate condemned in clear violation of the express mandates of the Fifth and Fourteenth Amendment of the Constitution of the United States. Respondents in turn Requested Summary Judgment.

It is of extreme importance to mention, that the Superior Court for the Municipality of Bayamón found, **that the existence of a Development Plan does not preclude said plan from being subjected to the Public use scrutiny**. However, the Court determined that it did not have enough evidence **to establish if said lands were subjected or affected by any other limitation** which would translate to public use at the time the August 21, 2000, auction notice was published. Respondents proceeded to file the corresponding appeal before the Appellate Court. Unfortunately, and in clear violation of petitioners expressed constitutional rights, said Court declared that the lands were destined to public use in accordance to the development plan, unilaterally established by the Executive Branch by which the Rosso Estate had been unconstitutionally condemned. According to the Appellate Court, the corresponding agencies where acting under color of law. The Appellate Court omitted a legitimate and rational standard analysis, in addition to other mandatory considerations due to the fact that by this point in time, said Court was in a clear position to identify that the original taking was highly arbitrary and suspicious based alone on the simple narrated facts established herein. Regardless, under the above mentioned defective legal reasoning and justification, the complaint was dismissed.

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[9] See Amended Complaint, Volume II of the Appendix, 2000-2078; see also item 15 of the Comparative Chart.

Thereafter, the Petitioners filed a Petition for Certiorari before the Supreme Court of Puerto Rico which was denied on August 26, 2005. A timely filed petition requesting rehearing was denied on January 30th, 2006. On February 8th, 2006, Petitioners proceeded to timely file a Motion Requesting a Stay of the Supreme Court's Mandate pending the resolution of a Pettion of Writ of Certiorari to be filed to this Honorable Court, under Rule 45(e) of the Rules of the Supreme Court of Puerto Rico. According to said Rule the Supreme Court could not issue a mandate allowing the disputed property to be executed until, the time established to file said Motion had traspired. On February 7th, 2006, the Court issued a premature mandate completely disregarding and violating the rules established by its own Court and Petitioner's right of due process under the law . Petitioner in turn filed for the premature mandate to be remanded in accordance to the Supreme Court's Rules. The resolution of said motion is still pending upon the Supreme Court. The jurisdiction of this court is invoked under the provisions of 28 U.S.C.A. § 1. This case directly involves the public use provision of the Takings Clause of the Fifth Amendment and the Due Process of the Fourteenth Amendment to the United States Constitution. Petitioners specifically seek review from this Court.

REASONS FOR GRANTING THE WRIT

The Supreme Court has held the **Fifth** and the **Fourteenth Amendment** of the constitution of the United States apply to **Puerto Rico** even though the latter is not a state. *Calero-Toledo v. Pearson Yacht Leasing Co.,* 416 U.S. 663, 668-69 n. 5, 94 S.Ct. 2080, 2084-85 n. 5, 40 L.Ed.2d 452 (1974)(Our emphasis and paraphrase) A government taking is valid when the legislature's purpose is **legitimate and its means are not irrational**, In *Hawaii Hous. Auth. v. Midkiff,* 467 U.S. 229 (1984). This case is not about the use of eminent domain for a traditional public use; nor does it concern the use of eminent domain for the purpose of urban renewal such as the condemnations upheld in *Berman v. Parker,* 348 U.S. 26 (1954). Neither is this a case where the Respondent proposes the use of eminent domain as part of a relatively careful and deliberative development plan or where tax revenue is questioned as a legitimate public purpose or public benefit, as in the recently decided, *Kelo vs. City of New London,* 125 S.Ct. 2655(2005). This case involves what petitioner understands to be two novel, but extremely important questions not only locally for Puerto Rico, but for national judicial policy. Especially, when we can foresee an inundation of condemnation litigation as a consequence of Hurricane Katrina's rebuilding efforts in the state of Louisiana and in the states of Florida and Mississippi:

Firstly, whether under the powers of eminent domain, the government condemnation of the Rosso Estate is valid; and if it were valid if the government may in turn validly and legally wait 37 years without putting the lands to public use:

Secondly, **and most important**, since said issue has never been resolved by any court, both Federal and State, since the founding of our Republic, is whether the public use clause to justify condemnation under the Police Powers of the State under the scrutiny of the 5th Amendment to the U.S. Constitution authorizes the Executive Branch to exercise the use of eminent domain in order to unilaterally amend the definition of public use without being subjected to any type of judicial or legislative review and scrutiny, respectively.

This Court has repeatedly stated that a government taking is valid when the legislature's purpose is **legitimate and its means**

are not irrational, In *Hawaii Hous. Auth. v. Midkiff,* 467 U.S. 229 (1984). However, the Courts rationale regarding how to determine the **legitimacy** and **rationality** as to defining the public use has never been clarified in a peruse manner that would impede the type of abuse that Petitioners have suffered due to the unchecked authority that can be bestowed upon the Executive Branch of Government to condemn private property arbitrarily and at will. Needless to say, even though the Supreme Court of Puerto Rico acknowledged that socialism, in *ELA v. Rosso, supra*, at 572, does in fact exist in our local jurisdiction and can exist as long as the state compensates the condemned property owners, said extreme and outdated economic principles must still be subjected to the legitimacy and rationality test that has been established by this Supreme Court under the scrutiny of both the 5th, and 14th Amendments of our constitution. Not even in the highly controversial and the divided opinion that was issued by this Court in *Kelo vs. City of New London*, 125 S.Ct. 2655 (2005), did the Court establish and/or define, among other things, any guidelines or constitutional test to properly determine when a government action is both rational or legitimate for purposes of satisfying constitutional muster.

Regardless, of the above test, as this court is aware, the standard of eminent domain has become broader as the years have progressed. When this Court began applying the Fifth Amendment to the states at the close of the 19th century, it embraced the broader and more natural interpretation of public use as "public purpose". *Fallbrook Irrigation Dist. V. Bradley*, 164 US 112, 158-164 (1896). This broader concept mirrors the Courts longstanding policy of establishing deference to the legislative branch of government in this important field. Unfortunately, said benevolent policies create black holes in our judicial policies that as it has happened throughout American history, leaves a dangerous window of opportunity for undetectable and impermissible favoritism in clear detriment of the interest of private property owners. We must never forget the not so distant days when the Soviet Union and the Communist threat existed as an imminent threat to the American way of life. A way of life that precisely differentiated our way of living from those that were subjected to communist and socialist economic and political system because in our nation, private property was a sacred institution. Petitioners acknowledge that jurisprudence has historically emphasized respect to state legislatures and state courts in discerning local public needs; avoiding rigid formulas and intrusive scrutiny in determining what public needs justify the use of the takings power. *Hairston v Danville & Western R. Co.*, 208 US 598, 606-607 (1908). However, as is guaranteed under the 5th and 14th Amendments: the sovereign **may not** take private property for the sole purpose of transferring it to another private party for simple profitable considerations, **even if paid just compensation**. We must remind this Supreme Court that compensation on its own does not justify the means unless it can pass both the legitimacy and rationality standard that has been repeatedly established by this Court. *Hawaii Hous. Auth. v. Midkiff*, 467 U.S. 229 (1984). Recent case law has left a wide indiscernible gap to determine what actually entails such public use under the legitimacy and rationality test.

The rational and legitimate standard used by this Court to establish the validity of eminent domain through public use has to be reviewed, for the above stated reasons, and this case presents all of the necessary factual elements that New London, *Id*, lacked in order for this Court to address the issue in full. It's an inconceivable reality for the petitioner to consider an American Nation where the government can exercise its vast and quasi-totalitarian police powers to condemn private property capriciously, arbitrarily, suspiciously and at times, for political vendetta, without the state being subject to a more rigid form of judicial scrutiny to assure the American people that their property rights and not only an emblem of our way of life, but that said rights will never be subject to illegitimate and irrational state actions. It is precisely for the above reason, that an illegitimate and irrational condemnation proceeding, as is the case at hand, must be declared null and void *ab initio* no matter the cost. American property rights must always be protected against abusive, illegitimate and irrational actions by the State. Precisely for the above reason is that petitioners feels compelled to move this Supreme Court to stop at this particular time in American history improper, illegal and abusive actions by both the state, but particularly, by the Executive Branch of Government.

By applying simple logic and simple mathematics, this Court will easily be able to ascertain that in the facts pertaining to this case, there exists enough **suspicious** government conduct, apparent favoritism in favor of private interests and blatant one-to-one transfer of property as to create a presumption of invalidity under the Public Use Clause. What distinguishes this case from similar previous cases, is that all of the transfers were executed outside the confines of a "Master Plan" or a simple plan, unlike in the most recent Court opinion in New London, *Id.*

In the New London opinion, *supra,* Justice Stevens emphasized in his concurring opinion that there existed no government conduct to warrant the creation of a standard or presumption of invalidity under the Public Use Clause. (Our quote, paraphrasing Justice Stevens.) In this case, the actions and inactions exercised by the government leaves **no doubt** as to the nature of the suspicious conduct on behalf of the government and the Executive Branch and clearly show that the procedures employed by its agencies with the Rosso Estate are simply abusive.

It is deeply disturbing and perturbing that Petitioners' lands (Rosso Estate) were condemned under the deceitful subterfuge of "public use" and have remained not only undeveloped for more than 37 years but they were then simply transferred as debt to other agencies which in turn sold said properties to private developers at **literally** the first opportunity of doing so. In the process of unilaterally becoming the biggest speculators of all, which consequently defeated the original public interest that was used to justify possibly politically targeted, illegitimate, and irrational condemnation. This case epitomizes a perfect example of the baneful but truthful phrase: "absolute power corrupts absolutely". This case reflects how by means of the power of eminent domain the government may strip away both the 5th and the 14th Amendment Clauses of our Federal Constitution for self serving, illegitimate reasons.

The first question presented before this Court is whether the original condemnation of the Rosso Estate *per se* is valid. Petitioners submit that said condemnation is clearly **null and void**. The vague and ambiguous facts that were used in ELA v. Rosso, *supra,* clearly establish that the amount of land that was subject to condemnation under the cited statute could not, under any logical scrutiny, impede land speculation and preserve for public use the Rosso Estate which is now being developed for profit by possibly the biggest, most powerful and influential real estate developer in Puerto Rico, Mora Development Corporation. However, in order to properly review this issue we must first clarify the matter that was previously raised in early proceedings regarding the doctrine of collateral estoppel. As previously stated, the case of Commonwealth vs. Rosso, *supra,* was decided in the year 1967. The figure of estoppel or collateral estoppel is a common law doctrine which is interpreted in the legal history of Puerto Rico as a corollary to *res judicata*[10], based on roman civil law. See *Millan vs. Caribe Motors Corp.,* 83 DPR 494 (1961). This figure precludes any subsequent dispute, among the same parties, of arguments already debated and solved by a valid and final judgment. *Schneider vs. Colegio de Abogados de Puerto Rico,* 670 F. Supp. 1098 (1987). The doctrine of "collateral estoppel" is viable when the essential fact debated and solved by a valid and final judgment is brought again in a second dispute between the same parties, even if the cause of action is different from the first." *Capó Sánchez vs. Secretario de Hacienda,* 92 DPR 837 (1965); *Pereira vs. Hernández,* 83 DPR 160 (1961).

As previously stated, BGF published an auction notice in the midst of the year 2000.[11] It was this event that spawned diverse causes of action for the Plaintiff-Petitioner, due to the fact that when BGF pretended to auction to the highest bidder the remainder of the Rosso Estate, without any kind of limit or restriction, that action in itself, constituted *de facto,* a renounce of any public benefit pursuit the State may have or have had for the Rosso Estate.

Plaintiff-Petitioner's Writ is based in events that happened during the 37 years **following** the taking of the Rosso Estate. The arguments before this Court evidence through the Goverments own actions after the condemnation of said lands that the purpose stated for said taking were never legitimate and rationale. Certainly, even if its intent was so, it was never materialized and unilaterally amended by the Executive Branch in clear detriment of the condemned land owners and in clear benefit of the new developer. We remind this Court that broadening the tax base to justify condemnation was never an issue addressed in the entire case at hand. Consequently, if said purpose was not legitimate and the government's actions irrational, the takings have to be deemed void or else this Court's historical rationale would be deemed meaningless. It is Hornbook law that "a contract or action that is absolutely null may not be confirmed or ratified by subsequent action(s)."

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[10] In Spanish it is known as "cosa juzgada", literally "thing adjourned".

[11] Pertinent to this case is the fact that the Appeals Court enjoined three certioraris from two resolutions mandated by the Instance Court and that were not related with either the order or the arguments with the certiorari which those others were consolidated with (KLCE200401540). Furthermore, the Appeals Court only requested Plaintiff-Petitioner arguments regarding that last certiorari KLCE 200401540, but NEVER requested any argument regarding any of the other three certioraris that constitutes the corpus of the appealed judgment.

Once again, we are compelled to remind this Supreme Court that the the original Rosso case, *supra* established that the governments eminent domain over the Rosso Estate was pursuant to Act No. 13 of the 16th of May of 1962. This Act creates the Puerto Rico Land Administration Agency and establishes the purpose of the taking of private property as follows:

> a) to curb the reckless rise in land prices; b) **to eliminate the practices of speculation in lands which only benefit a few to the prejudice of the totality of the growing population**, c) to assure the development of housing at low and moderate costs for families which do not yet have their own homes; d) To insure a reasonable cost for the lands necessary for industrial and commercial purposes which are considered indispensable for the life and progress of Puerto Rico; e) **to insure the creation of an inventory of land for all public works that may be realized in at least ten years.**

However, regardless of the purpose alleged by government in said Act, contrary to what has existed in every single case that has been cited by this Court in the case of New London, *supra.* **no Development Plan existed at the time when the condemnation of the Rosso Estate took place**. There was no carefully considered Plan from which to deduce public use and no clear and convincing evidence was ever presented to adduce that the economic benefits of the plan would in fact come to pass. The act however did expressly state in its Article 14 that the previous owner of the condemned property would have a Right of first Refusal if said land where to be sold.[12] A right which the Rosso heirs were never afforded.

The doctrine of Substantive Due Process holds that the Due Process Clause not only requires "due process," that is, basic *procedural* rights, but that it also protects basic *substantive* rights. "Substantive" rights are those general rights that reserve to the individual the power to possess or to do certain things, despite the government's desire to the contrary. These are rights like freedom of speech and religion. "Procedural" rights are special rights that, instead, dictate *how* the government can lawfully go about taking away a person's freedom or property or life, when the law otherwise gives them the power to do so.

The Due Process Clause of the Fourteenth Amendment, adopted in 1868, states *"nor shall any State deprive any person of life, liberty, or property, without due process of law . . . "* The facially clear meaning of this passage is that a state has to use sufficiently fair and just legal procedures whenever it is going to lawfully take away a persons life, freedom or possessions. Thus, before a man can be executed, imprisoned or fined for a crime, he must get a fair trial, based on legitimate evidence, with a jury, *etc.* These are procedural or "process" rights.

However, under "Substantive Due Process," the Supreme Court has developed a broader interpretation of the Clause, one that protects basic substantive rights, as well as the right to process. Substantive Due Process holds is that the Due Process Clauses of the Fifth and Fourteenth Amendments guarantee not only that appropriate and just procedures (or "processes") be used whenever the government is punishing a person or otherwise taking away a person's life, freedom or property, but that these clauses also guarantee that a person's life, freedom and property cannot be taken without appropriate governmental justification, *regardless* of the procedures used to do the taking. In a sense, it makes the "Due Process" clause a "Due Substance" clause as well.

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[12] See Amended Complaint.

When we examine the process by which the Rosso Estate was taken and the Local State Courts determinations regarding said Estate it is clear that the Rosso family has not been awarded Due Process not only regarding the Condemnation of their Estate but they have also not been awarded their day in Court. The recent emission of the Supreme Courts premature mandate and denial of remission of the same is a clear example of the Governments violation of Due Process Rights. The Rosso's have not had their day in trial or been able to conclude discovery in this case. They're Constitutional rights have been violated repeatedly. It is up to this Court to award them their day in trial.

When we examine the post-condemnation reality, it is quite clear that even if seen in the light most favorable to Respondents, if ever there was a public benefit intent in Act 13, it was not put into action. Or else can this Court honestly determine that it is **rational and legitimate** to reserve a relatively small parcel of land when we take into consideration the total amount of land that existed in the metropolitan area of San Juan, and in fact in all of Puerto Rico for thirty seven years in order to avoid price speculation? The Island of Puerto Rico's is approximately 9,104 sq km (3,508 sq mi). The maximum length from east to west (from Punta Puerca to Punta Higuero) is of 180 km (110 mi) and with a maximum width from north to south (from Isabella to Punta Colón) of 65 km (40 mi), 8,959 sq km. Comparatively, Puerto Rico is approximately three times the size of Rhode Island. The Rosso Estate comprised a total of 337.7225 cuerdas of Puerto Rico's total landmass. If, according to Act 13, the Rosso Estate was meant to assure the development of housing at moderate costs, why was it never developed into such objective? It is certainly not reasonable to reserve a land mass the size of the Rosso Estate for no use at all. In doing so, under the pretext of avoiding price speculation, the government arbitrarily suspicious logic and simple mathematics became the biggest price speculator of them all.[13]

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[13] It is interesting to note and to further support the suspicious nature of the Rosso Estate Condemnation, that the own Supreme Court acknowledged in its original opinion that the facts in evidence clearly projected an increase in per capita income in the San Juan metropolitan area. Under the above set of facts,

The Government may take property only when necessary and proper to the exercise of an expressly enumerated power. See Kohl v. United States, 91 US 367, 371-372(1876). The facts in the instant case demonstrate that from 1963 until 2006 the Rosso Estate has simply been passed from agency to agency, segregated, sold as payment for debts and ultimately sold to private developers, but never developed. What necessity or public interest have the actions of the government served in this case? Although true that in 1967 when Commonwealth v. Rosso, *supra* was decided the court discussed a plethora of reasons why the condemnation of the estate would benefit the public in general, including the fact that socialism was a good thing and the fact that they reviewed every commentator throughout the world, from Scandinavian Socialist, to the Pope and Franco's dictatorial regime. The Governments actions after the taking reflect the exact opposite.[14]

In addition, although indeed the Rosso's were compensated for the taking of their Estate, the Takings clause **also prohibits the government from taking property except "for public use"**. Where it otherwise the Takings Clause would either be meaningless or empty. And it cannot be presumed that any clause in the constitution is intended to be without effect". *Myers v. United States*, 272 US 52, 151 (1926). Is it enough to state public use for a condemnation to take place, but to never comply with said public use objectives? We are before facts that show that a property was condemned pursuant to what was considered a valid act and that the use by which the lands were taken never took place. However, the only action that did take place with the Rosso estate was that it was placed in auction for Private development and as has been clearly established on countless occasions before this Court, a purely private taking could not withstand the scrutiny of the public use requirement; for it would serve no legitimate purpose of government and thus be void". *Missoury Pacific R. Co. v. Nebraska*, 163 US 403 (1896).

Petitioners contend that the Appellate Courts judgment and the Supreme Courts' Order should be reversed, and this Court should hold that the Rosso Estate was illegally condemned when

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what would then be a legitimate and rational government justification to condemn the Rosso Estate. See ELA v. Rosso, *supra* at 533.

[14] Please refer to facts stated in Amended Complaint

viewed under the scrutiny of the Public Use Clause and therefore null and void. Accordingly, the totality of the Estate should be returned to their rightful owners and the rightful owners should return the originally paid amount to the government pursuant to the equitable doctrines of rescission. Which it is also important to mention are applicable when fraud occurs.

Lacking guidelines to determine the legitimacy and rationality of the governments actions regarding the Rosso Estate, we as rational beings must take into consideration the following elements:

What was the urgency of the matter subject to condemnation? Act 13 makes reference to a period of 10 years within which to develop the condemned lands under the purpose of public benefit. Why has it taken 43 years for said lands to be developed?

The government's conduct regarding the Rosso Estate is both suspicious and its redistribution of property is highly questionable. Even more so, is the legitimate and rational criteria used by legislature to justify the taking of the Rosso Estate. After the condemnation the government agencies segregated and fractioned the parcels, selling them to private development companies with no public use or interest legitimate rationalization. As far as Plaintiffs can determine without the benefit of discovery, said actions where executed **without clear guidelines or social interest imposition of any kind regarding their use.** It is an undisputed fact that the Rosso Estate was not subjected to an established condemnation development plan and that only after eighteen years had transpired, and the lands were condemned and most of the parcels sold, was it that the Executive Branch decided to unilaterally Create a Master Development Plan.[15]

For the above stated reasons, Petitioner should be allowed to recover the illegally condemned property, or in the alternative, be allowed to pursue legal action against the Government of Puerto Rico for illegally condemning Rosso's Estate, with whatever other remedy, both statutory and equitable this Court may deem proper, to grant to rectify a grave wrongdoing and injustice.

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[15] We request the Court take judicial notice that presently, the Government of Puerto Rico is partaking an endeavor to create, for the first time in our history, a Plan for property use for all of Puerto Rico, 43 years after the Rosso Estate was illegally condemned.

Public interest cannot be unilaterally amended under the 5th Amendment or redefined in detriment of affected property owners to the benefit of private interests. What would happen for example, if in Louisiana, the State Government would legislate to condemn property to impose restrictions for out of state and foreign investment and in order to avoid foreseeable rampant property speculation as a consequence of the devastation left behind after Hurricane Katrina, and then sat on the property for thirty seven years to finally sell said condemned property to private developers? How is the public interest protected under this scenario? It certainly is neither legitimate nor rational. In said scenario (of many different scenarios that can occur) as in the instant case, the State becomes the evil that is trying to destroy, the State is becoming a speculator. It is precisely the state, as in the present state, that defeats the public interest.

As this Court knows, America has gone through one of the worst natural disasters in its history with the passing of Hurricane Katrina. Entire families have been left without homes and are now deciphering what to do with their lives. What is to become of Due Process if the local legislative, executive and legal framework permits said speculation? In the case of New Orleans, where many homeowners will be declaring bankruptcy, and wanting to liquidate property, speculators will be, for a long period of time, vigilant for land deals. The City of New Orleans is ripe for "redevelopment". It is clear that eminent domain can be used as a means of transferring wealth to developers; a wealth redistribution scheme, that if the same is not furnished with proper guidelines to detect suspicious, arbitrary, politically motivated, illegal condemnation actions, it is very possible that said region of our nation could return a hundred years back in time to the evils of the Reconstruction period that benefit private interests. Our nation is weary of government action and the media reflects this.

An article, published on a CBS website over a year ago states, "Cities across the country have been using eminent domain to force people off their land, so private developers can build more expensive homes and offices that will pay more in property taxes than the buildings they're replacing." Eminent Domain: Being

Abused?,60Minutes,(http://portland.indymedia.org/en/2005/09/325009.shtml).

The Plaintiff-Petitioner sustains that the Commonwealth, by means of its agencies and instrumentalities, distorted the purpose of Act 12 and the judicial interpretation established in the Rosso case, supra, to such degree that the handling of the affairs of the **estate did not produce effective restraints in the selling prices, nor could it restrain the crude and ravaging inflationary speculation that by its owns statement of purpose it was supposed to avoid.**[16]

The Supreme Court of Puerto Rico, in order to justify the unjustifiable, inverted our Constitutional and Economic System into a socialist quasi-totalitarian state when we bestow our constitutionally protected right and duty to fiscalize government on the government, under the presumption that it can only do good and **that the mere statement of public use as purpose** is enough to permit the condemnation of lands and the stripping of the right to own private property. Needless to say, the above cannot stand constitutional muster under any type of legal scenario.

In a much too brief examination of the real issues in this case, the Appeals Court established as an immutable canon the determination made by the Puerto Rico Supreme Court in Commonwealth vs. Rosso, *supra*, while praising the purpose that served as a basis for Act 13 in a perennial form. In other words, not imposing any time limit on the effective application of the purpose that allegedly justified the condemnation itself; this conclusion is incorrect. Are we to simply allow that people are stripped from their private lands, their private homes, on a mere whim of the government? Of course not! Unfortunately, even if the facts are seen in the light most favorable for Respondent, if we see the Rosso Estates' condemnation on the purposes purported by Act

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[16] We emphasize that we are concluding that the decision made in ELA vs. Rosso, *supra*, is **null and void**. The fact that they handled incorrectly a clear legal issue does not ratify a null and void action. The expressions of the Appeals Court that sustain that the Plaintiff-Petitioner pretends to make a collateral attack of such decision not only is mistaken and false, but it is a non-sequitur of the claims and arguments of the Plaintiff-Petitioner made in all its briefs before the Instance Court and the Appeals Court. See Volume I and II, pages 660 and 2004, respectively.

13, public purposes were merely that: abstract, vague and ambiguous intentions and ideas that never materialized. Is that supposed to pass the scrutiny of the Public Use Clause under the 5th Amendment of our Federal Constitution? If so, the constitutional guarantees of Due Process that our founding fathers established and our nation has valued and praised, are merely rhetorical promises as well, good intentions that may never materialize!

These facts show that in the Rosso Estate there was never any fulfillment of the objectives that were the foundation for the taking of their private property in the first place. That intentional avoidance of the legal responsibility of BGF is still what BGF now pretends to continue doing with the remainder of the Rosso estate. This Court cannot let neither BGF nor the Municipality of Bayamón continue ignoring the Law while ravaging the remainder of the land parcels first comprised as the Rosso Estate.

The Appeals Court pretends now to extinguish 37 years of history of wrongdoings of the defendants in this case; actions that were and are immoral, illegal, *ultra vires*, and void.

The question that we bring now before this Court, is if the State, following a questionable, but for argument sake, valid application of its powers of eminent domain, takes portions of private properties with the intent to stop the ravaging land speculation, yet may validly and legally wait 37 years, unilaterally alter the rules of the game that were originally used to justify condemnation, waits until these lands appraise, consequently turning the State itself into the real estate speculator, to then offer the lands it took to the highest bidder in a public auction, without restrictions of any kind, except the mere attachment of the land to a "**Conceptual** Master Plan"[17] which applies to any other land parcel in Puerto Rico submitted under that plan, taken or not by the State.[18]

The answer to this question must be a categorical and emphatic NO, or otherwise we would be facing a collapse of our justice system. Once again, we are compelled to repeat that a purely private taking could not withstand the scrutiny of the public use requirement; since said action would serve no legitimate purpose of government and thus be void". *Missoury Pacific R. Co. v. Nebraska*, 163 US 403 (1896).

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[17] Although, as previously mentioned, the Government of Puerto Rico is partaking an endeavor to create, for the first time in our history, a Plan for property use for all of Puerto Rico, 43 years after the Rosso Estate was illegally condemned, **no plan has been approved as of today's date.**

[18] This same question has been made to both Instance Court and Appeals Court in several legal briefs filed before them.

The importance of economic development condemnations is that said can occur in any area, as long as the city can conceive of a possibly more profitable use of any property that might "benefit the public". If the Executive Branch has such unrestricted power without being subjected to judicial review, what type of future can private property owners expect in the United States? Under this premise, any home can be condemned under the guise of any public use. Can this Court allow said atrocity to occur in our great nation?

This Court's decisions in *Berman* and *Hawaii Hous. Auth. v. Midkiff*, 467 U.S. 229 (1984), supported the expansion of eminent domain authority to include takings for private economic development projects. Petitioners have incessantly argued this case without the benefit of the amount of discovery needed to accurately single out Respondents illegal actions. However, this Court must agree that the **suspicious** and **abusive** actions displayed by the Executive Branch in Puerto Rico in the instant case are clear indicators that strict scrutiny is necessary in order to avoid gross eminent domain violations under the pretext of the 5th Amendment takings clause.

Government authorities condemned private properties not just for a "public use," but also to achieve a "public benefit" such as the elimination of urban blight. Today, an even more expansive interpretation of public use in certain jurisdictions permits the taking of property for private economic development. To many, this represents a sea of change in the evolution of the law of takings because it blurs the distinction between public purpose and private benefit and cannot help but raise the specter that the power will be used to favor purely private interests. This case presents the court with an opportunity to address a constitutional issue of great significance, that is, whether there are limits to the government's authority to take private property by eminent domain when the public purpose originally presented as a purpose for the taking is never actually carried out, and, if said actions should convert said taking as null and void.

Likewise, this case presents this Court with a unique and timely opportunity to examine a federal constitutional issue of great significance: the limits to eminent domain authority in the area of private economic development.

The use of eminent domain for private development projects is as has been previously established by New London, supra an issue of national importance. It is a growing, nationwide controversy. A recent study documented that between 1998 and 2002 alone, there were over 10,000 filed or threatened condemnations that involved private-to-private transfers of property in 41 states. Berliner, *Public Power, Private Gain: A Five Year, State-By-State Report Examining The Abuse Of Eminent Domain* (2003) (available at http://www.ij.org/publications/castle/). *See, e.g.*, Cauchon, *Pushing the Limits of 'Public Use,'* USA Today, April 1, 2004; George, *Testing the Boundary Lines of Eminent Domain*, The New York Times, March 31, 2004; Cass, *Government Seizure of Homes Targeted*, The Boston Globe, May 12, 2003; Starkman, *Tracking the Abuse of Eminent Domain*, The Wall Street Journal, May 7, 2003; Carnahan, *Domain Game*, Forbes, December 9, 2002; Humphries, *The Uninvited Bulldozer*, Christian Science Monitor, April 26, 2001 and these condemnations, to paraphrase the words of the dissenting justices in this case, unquestionably blur the line between public purpose and private benefit and raise the specter that eminent domain authority is now being used to favor purely private interests. Moreover, as set forth below in this petition, these controversies have sparked numerous, often conflicting, court decisions.

The scope of this national phenomenon - and the litigation and controversy it engenders - demonstrates the importance of and the urgent need for this Court to address the limits of eminent domain authority under the U.S. Constitution. Eminent domain is one of the most awesome powers a government has at its disposal. As early as 1795, this Court described eminent domain as "**the despotic power.**" *Vanhorne's Lessee v. Dorrance*, 2 U.S. 304, 312 (1795). Eminent domain separates families from their homes. The dangers inherent with extreme power led the drafters of the U.S. Constitution to place limits on its use, including the requirement that takings be for "public use." Given the vast expansion of eminent domain authority to include the taking of homes and businesses so that the land can be transferred to private interests for economic development, it is imperative that this Court determine the limits on government's eminent domain authority so that the public use requirement does not become a nullity. The homes of Petitioners and millions of homes and businesses of property owners throughout the country hang in the balance.

It is important to emphasize, that the States of the Union are sharply divided on the question of whether eminent domain for economic development alone, rather than for the elimination of blight, constitutes a public use. *See Kelo,* 843 A.2d 532 (App. 50). Among the states that have considered the issue, no one legal test predominates. Indeed, nearly every state has devised its own test. *Daniels v. Area Plan Comm'n,* 306 F.3d 445, 459 (7th Cir. 2002); *Wilmington Parking Auth. v. Land with Improvements,* 521 A.2d 227, 231 (Del. 1987); *Randolph v. Wilmington Hous. Auth.,* 139 A.2d 476, 480 (Del. 1958); *Baycol, Inc. v. Downtown Dev. Auth.,* 315 So.2d 451, 455 (Fla. 1975); *Southwestern Illinois Development Authority v. National City Environmental, L.L.C.,* 768 N.E.2d 1, 7 (Ill. 2002); *Prince George's County v. Collington Crossroads, Inc.* 339 A.2d 278, 287 (Md. 1975); *Poletown Neighborhood Council v. City of Detroit,* 304 N.W. 455, 459 (Mich. 1981); *City of Bozeman v. Vaniman,* 898 P.2d 1208, 1214 (Mont. 1995); *City of Jamestown v. Leevers Supermarkets,* 552 N.W.2d 365, 369, 374 (N.D. 1996). *City of Little Rock v. Raines,* 411 S.W.2d 486, 491 (Ark. 1967); *City of Owensboro v. McCormick,* 581 S.W.2d 3, 6 (Ky. 1979); *Opinion of the Justices,* 131 A.2d 904, 907 (Me. 1957); *Opinion of the Justices,* 250 N.E.2d 547, 553 (Mass. 1969); *Merrill v. City of Manchester,* 499 A.2d 216, 217 (N.H. 1985); *Georgia Dept. of Transportation v. Jasper County,* 586 S.E.2d 853, 855 (S.C. 2003); *Petition of Seattle,* 638 P.2d 549, 554 (Wash. 1981). *General Bldg. Contractors, L.L.C. v. Bd. of Shawnee County Commn'rs,* 66 P.3d 873 (Kan. 2003); *City of Minneapolis v. Wurtele,* 291 N.W.2d 386 (Minn. 1980); *Appeal of City of Keene,* 693 A.2d 412 (N.H. 1997); *In the Matter of Port of New York Auth.,* 219 N.E.2d 797 (N.Y. 1966); *Cannata v. City of New York,* 11 N.Y.2d 210 (N.Y. 1962).

State courts are obviously struggling with how to apply the public use requirement. All courts agree, in general, that if the primary purpose is public and the private benefits incidental, then the condemnation passes constitutional muster. All agree that, conversely, if the primary purpose is private and the public benefits incidental, then the condemnation is unconstitutional. Unfortunately, it seems there is little agreement on what that further analysis should be entertained, conducted and put into rigor. Among states that agree that economic development can be a public use, some apply minimal scrutiny and some use heightened scrutiny. Among the states that find economic development is not a public use, there are several competing tests.

Some states apply heightened scrutiny to determine whether the public purpose is primary or incidental. In its well-known decision in *Poletown Neighborhood Council v. City of Detroit*, 304 N.W.2d 455 (Mich. 1981), the Michigan Supreme Court, perhaps concerned about the breadth and impact of its ruling, attempted to limit it by creating a heightened scrutiny standard:

Where, as here, the condemnation power is exercised in a way that benefits specific and identifiable private interests, a court inspects with heightened scrutiny the claim that the public interest is the predominant interest being advanced. Such public benefit cannot be speculative or marginal but must be clear and significant if it is to be within the legitimate purpose as stated by the Legislature. 304 N.W.2d at 459-60. *See Wilmington Parking Auth. v. Land with Improvements*, 521 A.2d 227, 231 (Del. 1987); *Wilmington Parking Auth.*, 521 A.2d at 232 (primary purpose determined by looking at objective "consequences and effects" of the taking); *see also City of Jamestown v. Leevers*, 552 N.W.2d 365, 372- 74 (N.D. 1996) (despite finding of public use in general, remanding for determination of primary purpose of condemnation and citing *Poletown's* heightened scrutiny standard).

Florida and Washington use the following method, but instead of asking if the benefit is direct or indirect, they use a "but-for" test that asks if the public benefit would exist absent private benefit. If so, then the public purpose is primary, and any other private benefits will not defeat the condemnation. However, if the public use would not exist but for the private one, then the private purpose is primary and the public use incidental. *Georgia Dept. of Transportation v. Jasper County*, 586 S.E.2d 853, 856, 857 (S.C.

2003) (property may not be taken "on vague grounds of public benefit to spring from a more profitable use").

According to Puerto Rico, as long as the city has come up with a chain of causation that could eventually lead to some public benefits, then that is the primary purpose. According to the other states, when public benefits occur only indirectly and are dependent upon the realization of private benefit, then the public benefit is incidental and the condemnation therefore lacking in public use.

The Takings Clause, and indeed the entire U.S. Constitution, provides the baseline of the rights of U.S. citizens. **Although states may provide more protection, they may not provide less.** *See, e.g.*, *Harper v. VA Dep't of Taxation*, 509 U.S. 86, 102 (1993), *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528, 549 (1985). It is clear from the conflicting authorities and profusion of legal tests that state courts do not know what that baseline constitutional protection might be. The states urgently need guidance and guidelines and Justice Kennedy recommendations in New London, Supra from this Court and clarification of the constitutional public use requirement as they face the increasingly common practice of condemnations for private development.

Midkiff, supra, addressed the regulation of oligopolies, which, as *Midkiff* pointed out, represents "a classic exercise of a State's police powers." *See* *Hawaii Hous. Auth. v. Midkiff*, 467 U.S. 229, 242 (1984). As explained by the dissent in this case, and evidenced by the decisions in *SWIDA* and other cases, neither *Berman* nor *Midkiff* necessarily controls how courts should evaluate the constitutionality of eminent domain for the sole purpose of economic development. *See* *Kelo*, 843 A.2d at 593-95 (App. 170-74); *SWIDA*, 768 N.E.2d at 8-9. As the dissent explained, for example, it is possible to accept a legislative finding of public purpose and yet to find that particular condemnations do not in fact sufficiently benefit the public to survive constitutional scrutiny, as is also the case at hand. *See id.*; *cf. SWIDA*, 768 N.E.2d at 26-27 ("the government does not have unlimited power to redefine property rights") (citing *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 439 (1982)). Yet a number of courts, including the court below, have concluded that *Midkiff* dictates that, absent overwhelming evidence of **bad faith** or **official corruption**,[19] all uses of eminent domain must be affirmed. *See, e.g.*, *Leevers Supermarkets*, 552 N.W.2d at 371 (property owner "failed to demonstrate bad faith or fraud"); *Wurtele*, 291 N.W.2d at 390 (government's finding that "a project is in the public interest is presumed correct unless there is a showing of fraud or undue influence").

The need for that framework - and for guidance from this Court on the application of the federal public use requirement - will only grow as more states face the increasingly common use of eminent domain for private business matter.

In order to be faithful to the first principles of constitutional construction, there must be distinct substance and meaning to the requirement of "public use" as opposed to the general prohibition against government malfeasance. "Public use" must, instead, mean something about the relationship of the condemnation to the use or benefit of the public or else many other constitutional rights will be thwarted under the subterfuge of public use.

Based on Justice Kennedy's expressed concerns in New London, *supra*, Petitioners cannot think of a more defined case and a better opportunity to review the Public use standard and the concept of eminent domain than the present case.

---

[19] Even though **bad faith** and **corruption** can be inferred from the facts of the present case, in the matter of corruption, discovery would have definitively permitted the moving party to establish with particularity said fact, but unfortunately, in an era (ELA v. Rosso, *supra*) that the Government of Puerto Rico functions under a one party rule including the absolute control of the political, economic and judicial structure, discovery proceedings in a case as Rosso would be impeded at all cost. Moreover, it is important to mention that the same political party that ruled Puerto Rico when the Rosso Estate was condemned is the same that controls the Executive Branch, the Judiciary and the economic structure during the current administration. Dietz, James L., Economic History of Puerto Rico, Institutional Change and Capitalist Development, Princeton, 182 (1986)Morales Carrion, Arturo, Puerto Rico, A political and cultural history, Norton, 256 (1983)., "States Review Eminent Domain", USA Today, Monday February 20th, 2006, Front Page, Government Relations Report, December 2005, AEE will be able to culminate the East Passage, El Pais Newspaper, page 16 (Wednesday January 18th, 2006). Petitioners request that the Court take judicial notice of these Articles. We will file a formal Motion Regarding said documents.

CONCLUSION

Petitioners believe that no precedent exists in the history of the United States to answer the controversies that have been brought to the attention of this Supreme Court. Petitioners also firmly believe, that States and federal Courts are inundated with condemnation related suits under the 5th and 14th Amendments to the United States Constitution and that it seems wise and proper to aspire to minimize the waste of scare judicial resources by entertaining and adjudicating the present set of controversies.

Granting this petition is appropriate to restore some recognizable meaning to the public use requirement of the U.S. Constitution. Of course, the petition stage is not the time to resolve the issue of the proper standard. Nevertheless, petitioners believe that it is definitively the time, to accept review of this case in order to resolve various important national issues that may establish a meaningful check on the abuses of eminent domain authority and to provide guidance to all government officials, both at the local and federal level, property owners, and courts in general who must review in an ever growing bases cases directly related reviewing condemnations controversies for private economic development.

WHEREFORE, in light of all the foregoing reasons, Petitioners respectfully ask this honorable Court to grant the present petition, Reopen the case in Instance Court and remand proceedings to said Court. Petitioners respectfully request that as to the first and second questions presented before this Court:

1. That the *Commonwealth v. Rosso,* case, *supra,* be declared null and void for violating the Public Use Clause under the 5th Amended of the United States Constitution.
2. That rescission be granted as an equitable remedy be granted and all lands that were illegally condemned be returned to their rightful owners, and as an alternative: and pertaining to the third question presented;

3. That Petitioners right of first refusal be granted and that petitioners be duly compensated for compensatory damages Rosso Estate.

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Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of April, 2006, I served three copies of this Petition for Certiorari as required by Rule 29 (4)(a) of this Court, and three copies of Appendix to be mailed by Express Mail of the United State Postal Service to:

Clerk of the Court
Supreme Court of the United States
1 First Street, N.E.
Washington, DC 20543

One copy of this Petition for Certiorari has also been served by the United State Postal Service to:

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ANNEX A

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COMMONWEALTH OF PUERTO RICO
COURT OF FIRST INSTANCE
SUPERIOR COURT OF BAYAMON

Carmen T. Rosso-Descartes a/k/a Carmen Rosso-de Irizarry PLAINTIFF Vs. GOVERNMENT DEVELOPMENT BANK OF PUERTO RICO;, JOHN DOE AND RICHARD ROE, as the fictitious names of all parties with interest in purchasing the property subject of this litigation and/or with interest in participating in an auction scheduled by the Government Development Bank of Puerto Rico on the farm subject of this litigation scheduled for October 31, 2000 or on any other date that it may be rescheduled to. **DEFENDANTS**	CIVIL NUM.: DAC 2000- 1263 Courtroom 404 RE: DECLARATORY JUDGMENT AND REQUEST FOR INJUNCTION

REQUEST FOR DECLARATORY JUDGMENT AND FOR INJUNCTION

TO THE HONORABLE COURT:

COMES NOW the plaintiff, CARMEN T. ROSSO DESCARTES a/k/a/ CARMEN ROSSO DE IRIZARRY, hereinafter designated as "ROSSO", through its undersigned professional representation, and very respectfully states, alleges and prays:

A. INTRODUCTION

1. ROSSO is of legal age, married to Mr. Alfredo Irizarry Siles, owner, and resident of Z-1 Montebello Street, Garden Hills, Guaynabo, Puerto Rico 00966, and telephone number, 793-3615.

2. Defendant, GOVERNMENT DEVELOPMENT BANK OF PUERTO RICO, hereinafter designated as "GDB", is an entity of the Government of Puerto Rico with main office at Minillas Government Center, Santurce, Puerto Rico and as provided by its own Corporation Charter, has the standing and the authority to sue and be sued. (7 L.P.R.A. Sec. 552).

3. Co-defendants, JOHN DOE and RICHARD ROE, are the fictitious names of each and any person interested in purchasing the property subject of this litigation, the Rosso Farm, and/or interested in participating in an auction scheduled by the GDB on the farm subject of this litigation scheduled for October 31, 2000 or on any other date that it might be rescheduled to. When the real name of the parties is determined, the complaint will be amended to so include them.

B. FACTS

1. Mr. Jorge Rosso, deceased, and his wife, Carmen Descartes de Rosso were owners in full domain of the land described in Exhibit A hereof and hereinafter designated as "the Rosso Farm".

2. The plaintiff, ROSSO, is the legitimate daughter of don Jorge Rosso (r.i.p.) and Mrs. Carmen Descartes de Rosso.

3. After an extensive process of judicial expropriation with respect to the Rosso Farm, on April 12, 1971, Judge Domingo Raffucci, Superior Court, San Juan Part, entered Judgment in consolidated cases numbers: E-63-1652, E-63-1655 and E-63-1656, by virtue whereby he ordered the Government of Puerto Rico to deposit the additional amount of $6,716,856.56. The Rosso Farm was then designated for public use. Copy of the referred Judgment is attached, as Exhibit B hereof.

4. By information or belief, the Rosso Farm was purchased by the GDB on December 30, 1997 by virtue of Deed

Number 12 of payment in kind before Notary Public Guillermo R. Picó Gómez.

5. On or about August 20, 2000, the GDB published or had published in a newspaper of general circulation in Puerto Rico, an advertisement inviting persons interested in submitting proposals to purchase the Rosso Farm, stating that the auction to such effects would be held on September 20, 2000. Said auction was subsequently postponed for September 29, 2000, and finally transferred for October 31, 2000.

6. On or about September 27, 2000, ROSSO's legal representative, sent a letter to Mr. Amaury Díaz, Finance Director of GDB, and contact person named in the newspaper advertisements published by GDB, wherein they categorically stated ROSSO's interest and firm intention to exercise her preferred right to repurchase the Rosso Farm. Attached as Exhibit C hereof, is copy of the mentioned letter which clearly shows its receipt on September 27, 2000. As of today, Mr. Díaz has not yet replied to it.

C. DISCUSSION

Our legal code clearly establishes the preferred right of the person from whom his/her farm was expropriated, to repurchase the same, in the event that it has not been used for the purpose for which it was expropriated.

Section 31(a) of Title 28 of the Laws of Puerto Rico Annotated, in its pertinent portion, provides:

> "Natural persons or their heirs, as well as artificial persons from whom any department, agency, instrumentality of the Commonwealth of Puerto Rico or municipality has expropriated or acquired goods in any other form, **shall have a preferred right to repurchase their property when the title holder thereof resolves to partially or completely sell the goods so acquired which have ceased being of public usefulness.** This preferred right may not be transferred to other natural or artificial persons..."
> (Emphasis added)

It behooves us to examine the requirements of the statute in order to activate the preferred right. Let's see.

In the first place, it is required that it be the person from whom the property was expropriated or his/her heirs. In the case before us, because don Jorge Rosso died, the right is being claimed by his daughter and heir, plaintiff herein. Even when there are other heirs, plaintiff is in her perfect right of exercising hers alone if the others do not do so. The state of law in effect so establishes it.

Section 31g of Title 28 of the Laws of Puerto Rico Annotated provides:

> "In the event the goods to be sold had been expropriated or acquired from several co-owners, the repurchase preference will be withheld by all jointly in the same proportion in which they were previous owners ***and in the event that some co-owners do not exercise, in time and form, their preferred right to repurchase the remaining ones may do so,*** and in this case shall have the right to repurchase in the same proportion in which they were previously owners and in the portion of that one or those who did not exercise their preferred right it shall be distributed in equal parts among those who do exercise it."
> (Emphasis added).

In other words, pursuant to the provisions of the statute, ROSSO may unilaterally exercise her preferred right to repurchase of the Rosso Farm, even when the other heirs of Don Jorge Rosso choose not to do so.

In the second place, it is required for an expropriation to have taken place. There is no controversy on this issue. We make reference to the Judgment attached as Exhibit B hereof.

In the third place, it is required for the instrumentality of the Government of Puerto Rico who is the title holder of the property "to resolve to totally or partially sell the goods". 28 L.P.R.A. Sec. 31(a). Pursuant to what is informed by the advertisement published by the GDB, copy of which is attached as Exhibit D, the GDB invites to make offers to purchase the Rosso Farm.

Finally, it is also required that the land in question ceased being of public usefulness. This requirement is confirmed by the GDB itself, when it requests purchase offers from the general public and not from governmental entities. In addition to this, nowhere in the advertisements published is the requirement established that the Rosso Farm be destined for public use. As a matter of logic, the fact itself that they are requesting offers from private enterprise and general public is a true indication that the Government does not have any public use programmed for the Rosso Farm.

In addition to the above, it is necessary to emphasize that since April 12, 1971, date in which the Government purchased by expropriation the Rosso Farm, until October 31, 2000, date in which it intends to sell it to the public, the government has not performed any work for any public use or benefit on the mentioned farm.

Having clearly established ROSSO's preferred right to repurchase the Rosso Farm, it remains to establish the price at which sad right will be exercised. Let's see.

Section 31(h) of Title 28 of the Laws of Puerto Rico Annotated (28 L.P.R.A. Sec. 31(h)) provides:

"The sales price of the goods to be sold and the lease installment shall be as follows:

> (a) In the event the expropriated or purchased goods are not used by the title holder by means of sales deed for some public use project or when the decision is taken not to carry out the work, **the sales price to the previous owner, successors or assignee shall be the same at which the title holder has acquired...."**
>
> ...

In the case before us, it is vital for the Honorable Court to grant the request for injunction, submitted herein, in view of the fact that if the Rosso Farm is sold at auction, the plaintiff's rights will suffer irreparable damage. In addition to that, said action by the GDB would constitute an illegal seizure of property, all of which would be in violation to the Constitution of the Commonwealth of Puerto Rico and the Constitution of the United States of America, pillars of our judicial system.

If meritorious, the plaintiff would be willing to post a reasonable bond to respond for whatever damages this litigation may cause, should this party prevail.

The plaintiff reserves the right to amend the complaint and its allegations. It also reserves the right to include or add additional parties should that need arise.

D. CONCLUSION AND PRAYER

Having established the plaintiff's preferred right to repurchase the Rosso Farm, at the price it was expropriated, and there being no controversy on the facts detailed above, we very respectfully pray that the Honorable Court grant this request for declaratory judgment, orders the stay of the auction proceedings commenced by the defendant and order the Government Development Bank of Puerto Rico to sell the Rosso Farm to the plaintiff in accordance to what has been established by law.

OATH

I, CARMEN T. ROSSO DESCARTES, also known as Carmen Rosso de Irizarry, being of legal age, married to Alfredo Irizarry Siles, owner, resident of Guaynabo, Puerto Rico and previously sworn, STATE:

1. That my name and personal circumstances are those previously described.
2. That I am the legitimate daughter of don Jorge Rosso, deceased, and Mrs. Carmen Descartes de Rosso.
3. That I have read the foregoing complaint and I know by my own and personal knowledge that the facts alleged therein are true.

4. That I render this statement for all pertinent legal purposes, freely and without being coerced by any person.

At Guaynabo, Puerto Rico, on October 31, 2000.

[Signature]
s/CARMEN ROSSO DE

IRIZARRY

Affidavit Number: 19896

Sworn and signed before me by Mrs. Carmen Rosso de Irizarry, of the personal circumstances described above, whom

I attest knowing personally, in Guaynabo, Puerto Rico, today, October 31, 2000, of all the foregoing I ATTEST AGAIN.

[Signature]
NOTARY

PUBLIC
[Ink Stamp:
"Luis Rodríguez Sigas,
Attorney - Notary
Puerto Rico"]

RESPECTFULLY SUBMITTED.
In San Juan, Puerto Rico, on October 31, 2000.

[Signature]
s/CARLOS RUIZ COX, ESQ.
Bar No. 4179
P. O. Box 9021547
SAN JUAN, P.R. 00902-1547
Tel.: 249-4546 / 723-3331

Oct 31 2000
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General Court of Justice
of Puerto Rico
Superior Court Bayamón Part]

EXHIBIT A

Legal Description of the Property (as set forth in the Spanish Language in the Registry of Property of Puerto Rico, First Section of Bayamón (the "Registry"):

"URBAN: Parcel of land located in Juan Sánchez of Bayamón and Pueblo Viejo of Guaynabo Wards, with a superficial measure of nine hundred thirty three thousand five hundred fifty nine point five thousand three hundred forty eight square meters (933,559.5348 s.m.), equivalent to two hundred thirty seven point fifty two "cuerdas"; bounding on the North, with Urbanization Jardines de Caparra, land property of the Municipality of Bayamón which separates them from a roadway known as El Polvorín, land property of Martin Aquino, Tomas Méndez Rosa and Saturno Ortega and the Bayamón River; on the South, with the right of way of State Road Number One Hundred Seventy Seven (177) or Lomas Verdes Avenue and as a consequence the farm described is affected with a noise damping zone, with land from the main farm and with Urbanization Prado Alto; on the East, with the other portion of this farm which is located in the Pueblo Viejo Ward of Guaynabo, with Urbanization Prado Alto, with land from the main farm and with Saturno Ortega; on the West, with the Bayamón River.

The portion of this farm that is located in the Pueblo Viejo Ward of Guaynabo:

URBAN: Parcel of land located in the Pueblo Viejo Ward of the municipal term of Guaynabo, with a superficial measure of seventy nine thousand two hundred sixty point eight thousand nine hundred seventy four square meters (79,260.8974 s.m.) equivalent to twenty point seventeen "cuerdas" (20.17 "cuerdas"), bordering on the North, with land property of Saturno Ortega, Martin Aquino and Tomas Mendez Rosa; on the South with the right of way of State Road One Hundred Seventy Seven (177) or Lomas Verdes Avenue, with land of the principal farm, with Urbanization Prado Alto; on the East, with land property of Francisco Alejandro, William Cuevas and Tomas Rosa, with Buen Samaritano Ward and Urbanizations Prado Alto and Torrimar; on the West, with the portion of this farm which is located in the Juan Sánchez Ward of Bayamón."

The preceding description is of the remainder of this property after the segregation of the following (i) a parcel of 43,720.1020 square meters, equivalent to 11.1236 *cuerdas*, pursuant to Deed Number Four of Segregation, Release and Purchase and Sale, executed in Bayamón, Puerto Rico on July 14, 1994, before Notary Public Viviam S. Acosta Ruiz, as clarified pursuant to Deed Number Thirty-one of Clarification, executed in Bayamôn, Puerto Rico on December 21, 1998 before Notary Public Ricardo Robles Caraballo, which deed was presented in the Registry on April 21, 1999 and is pending recordation at entry number 277 of volume number 1.017 of the Book of Daily Entries of the Registry. (ii) a parcel of 50.83 1.3408 square meters. equivalent to 12.9329 *cuerdas*. pursuant to Deed Number Twenty-six of Constitution of Perpetual Easement for Wetlands, for Utilities and Segregation and Purchase and Sale, executed in San Juan, Puerto Rico on September 10, 1998 before Notary Public Vicente J. Zayas Plaza, which deed was presented in the Registry on October 1, 1998 and is pending recordation at entry number 64 of volume number 991 of the Book of Daily Entries of the Registry, and (iii) three parcels comprising (A) 25,515.246 square meters, equivalent to 6.49193 *cuerdas*, (B) 6,589.400 square meters, equivalent to 1.67656 *cuerdas*, and (C) 84,750.053 square meters, equivalent to 21.5632 *cuerdas*, respectively, pursuant to Deed Number Six of Segregation and Purchase and Sale, executed in San Juan, Puerto Rico on March 22, 2000 before Notary Public Guillermo R. Picó Gómez, which deed was presented at the Registry on May 3, 2000 and is pending recordation at entry number 300 of volume number 1,068 of the Book of Daily entries of the Registry.

Recordation Data:

Simple title to the Property (*pleno dominio*) is recorded in the Registry in favor of Corporación de Renovación Urbana y Vivienda de Puerto Rico ("CRUV"), pursuant to a grouping executed under Deed Number Twenty-four, executed in San Juan, Puerto Rico on April 26, 1990 before Notary Public Migdalia Carmona Morales, recorded at page number 1,495 of the Registry, property number 66,048, first inscription.

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G

Supe

Ownership Tract:

The Property was created by the grouping of property number 63,175, recorded in the Registry at page number 91 of volume number 1,420 of Bayamón, property number 31,644, recorded in the Registry at page number 1 of volume number 847 of Guaynabo, and property number 33,368, recorded in the Registry at page number 190 of volume number 911 of Guaynabo. The Office for the Liquidation of Accounts of the CRUV (the "Receiver") assumed control of the Property from CRUV, whose simple title (pleno dominio) to the Property is recorded at page number 206 of volume number 1,495 of the Registry, property number 66,048, by virtue of the provisions of Article 2 of Act Number 55 of August 9, 1991. The Bank acquired title to the Property from the Receiver pursuant to Deed Number Twelve of Tçansfer of Property In Lieu of Payment, executed in San Juan, Puerto Rico on December 30, 1997 before Notary Public Guillermo R. Picó Gómez, which was presented at the Registry on January 23, 1998 at entry number 82 of volume number 957 of the Book of Daily Entries of the Registry, was mistakenly withdrawn from the Registry and was presented anew in the Registry on May 14, 1999 and is pending recordation at entry number 207 of volume number 1,021 of the Book of Daily Entries of the Registry.

Liens and Encumbrances of Record:

1. By itself, it is free of liens and encumbrances of record.

2. By its origin, it is encumbered by the following:

    a. Easement in favor of the Puerto Rico Railway Light and Power;

    b. Easement in favor of the Puerto Rico Electric Power Authority;

    c. Easement in favor of the Puerto Rico Acqueduct and Sewer Authority;

d. Easement in favor of the Municipality of *Guaynabo;*

e. Mortgage: Securing a note to the order qf the Puerto Rico Land Administration, in the principal amount of $7,140,571.17, without interest, due on July 3, 1991, as per Deed Number Four executed in San Juan, Puerto Rico on July 3, 1985 before Notary Public Gloria I. Perez Maury, recorded at page number 91 of volume number 1,420 of Bayamon, property number 63,175, first inscription (hereinafter the "Mortgage").

The Mortgage has been canceled pursuant to Deed Number Five of Cancellation of Mortgage Note executed on March 22, 2000 before Notary Public Guillermo R. Picó Gómez, which deed was presented in the Registry on May 3, 2000 at entry number 299 of volume number 1.068 of the Book of Daily Entries of the Registry.

f. Notice of Judgment In San Juan Superior Court of the Court of First Instance of Puerto Rico, Civil Case Number 87-3383 (903) tiled by El Jardín de Rio Piedras, Inc., plaintiff, against Corporación de Renovación Urbana y Vivienda de Puerto Rico, defendant, regarding specific performance of contract and damages, filed at the Registry on December 2, 1998 and pending recordation at entry number 175 of volume number 998 of the Book of Daily Entries of the Registry.

This Notice of Judgment has been cancelled pursuant to a court order issued on February 18, 2000 by the Bayamon Superior Court of the Court of First Instance of Puerto Rico, Civil Case Number DAC-98-1056 filed by El Jardín de Rio Piedras, Inc., plaintiff, against Puerto Rico Department of Housing and Government Development Bank for Puerto Rico (see below).

g. Notice of Claim: In Bayamón Superior Court of the Court of First Instance of Puerto Rico, Civil Case Number DAC-98-1056 tiled by El Jardín de Rio Piedras, Inc., plaintiff, against Puerto Rico Department of Housing and Government Development Bank for Puerto Rico, defendants, regarding specific performance of contract and damages, filed in the Registry on January 19, 1999 and pending recordation at entry number 19 of volume number 1,004 of the Book of Daily Entries of the Registry. This Notice of Claim has been cancelled pursuant to a court order issued on February 18, 2000 by the Bayamon Superior Court of the Court of First Instance of Puerto Rico, Civil Case Number DAC-98-1056 filed by El Jardín de Rio Piedras, Inc., plaintiff, against Puerto Rico Department of Housing and Government Development Bank for Puerto Rico

h. Notice of Claim: In Bayamón Superior Court of the Court of First Instance of Puerto Rico, Civil Case Number DAC-98-1056 filed by El Jardín de Rio Piedras, Inc., plaintiff, against Puerto Rico Department of Housing and Government Development Bank for Puerto Rico, defendants, regarding specific performance of contract and damages, filed in the Registry on May 5, 2000 and pending recordation at entry number 128 of volume number 1,069 of the Book of Daily Entries of the Registry.

i. Writ: Executed by Vicente J. Zayas Plaza wider affidavit number 2760 before Notary Public Dolores Sanjurjo López, requesting (i) that the recordation of the court order for the cancellation of the Notices of Judgment and of Claim mentioned in paragraphs f and g, above, be denied pending resolution of certain court proceedings, or, alternatively, (ii) that the effectiveness of such court order be limited to the transaction authorized by the court.

EXHIBIT B

SUPERIOR COURT OF PUERTO RICO
SAN JUAN PART

THE COMMONWEALTH OF) CASES NUMBERS: E-63-1652
PUERTO RICO, etc.) E-63-1655
) E-63-1656
Petitioner,)
)
Vs.)
)
Metropolitan Construction) RE:
Corporation, Jorge J. Rosso and)
his wife Carmen Descartes,)
J.I.R. Corporation, et als.,)
)
Parties with Interest.)
)
) EMINENT DOMAIN EXPROPRIATION

JUDGMENT

On December 5, 1963, in the Superior Court of Puerto Rico, Expropriations Part, the cases pertaining to the above captioned matter were filed with the purpose of acquiring several parcels of land broadly described in Exhibit "A" which was attached and made part of the Request, depositing the amount of $1,379,886.00 as the estimate of the compensation to be paid for the referred properties.

The procedure was filed on behalf of the Commonwealth of Puerto Rico, subscribing the Statement the Honorable Governor of Puerto Rico for goals and purposes of the Land Administration, as was created by Act Number 13 of May 16, 1962 and in addition to said Act, the proceeding

was filed under the authority of the provisions contained in the Genera
Eminent Domain Expropriation Act, Act of March 12, 1903, as amend

A matter arose with respect to the material delivery of the prop
and although the title of domain continued with the Commonwealth of
Puerto Rico by Resolution and Order entered by the Honorable Judge J
R. Calderón, entered on January 24, 1964, the suspension of the materi
delivery of the properties was decreed until the case in its merits was resolved.

After a prolonged hearing on its merits, because the defendant l
attacked the constitutionality of the law creating the Land Administrati
on July 2, 1964, Honorable Judge Calderón entered judgment in the ca:

The docket of the case was brought forth before the Honorable Supreme Court of Puerto Rico by the plaintiff, who, through the Honorable Judge Carlos Santana Becerra, on December 7, 1967 repeal
the judgment entered by the Superior Court of Puerto Rico, San Juan P
and declared that Act Number 13 of May 16, 1962 was constitutional,
was also the whole proceeding followed by the Land Administration, a
well as what refers to the Project, leaving in full force and effect as the
law of the case all the conclusions of fact with regards to the condition:
the property as of December 5, 1963,

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Superior Court San Juan Part]

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date of the filing of the case, and also pending determination of the fair constitutional compensation which in accordance to the law corresponds to plaintiffs.

In its pertinent part, the judgment of the Honorable Judge Calderón concluded:

> "That defendant measured its properties, raised topographical sketches thereof, destroyed sown land and sugar cane plantations existing thereon, leveled its terrain and channeled its natural and rain waters, installed cement and gravel processing plants, as well as equipment repair warehouses and workshops used in its industries and other activities, and began the exploitation of gravel mines, select land and other natural resources of the farm, which are also used in the field of the construction industry.
>
> By December 5, 1963, and upon the holding of an ocular inspection, the terrain had already been leveled, presented great earth movements, and its natural and rain waters seemed channeled and in course. There still remained the equipment used for said work.
>
> It was established and it is so determined by this Court, that said terrains were not vacant when the complaint was filed, being engaged in the uses stated above and being the subject of a development in full execution."

Reconsideration of said judgment was requested by the plaintiff on January 22, 1968 and our Supreme Court, by Resolution entered on February 2, 1968, denied the Motion for Reconsideration.

The docket of the case was filed before the Honorable Supreme Court of the United States by the plaintiff and said Higher Court, by Resolution entered on November 25, 1968, dismissed because there was no federal matter involved in the judgment, nor in the reconsideration.

The order was sent to this Court to be ruled with regards to the ruling of the fair constitutional compensation to be paid to the defendant [sic] for the properties subject of this action.

This Court, through its Honorable Judge Fausto Ramon Quirós, entered an order scheduling a hearing in the merits of the case to be held during the week of May 19 to 23 of 1969.

By Order signed by the Honorable Judge Francisco

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of Puerto Rico
Superior Court San Juan Part]

Reginona, the withdrawal of the funds deposited on May 20, 1970 was granted.

Subsequently, the plaintiff requested an additional term to make effective the revised valuation study by Motion filed on July 22, 1970. The case was scheduled for August 20, 1970.

On August 20, 1970, the hearing previously scheduled by this Court was held and the parties appeared represented by counsel and the plaintiff, also assisted by its expert appraiser, Engineer Orlando Flores.

During the hearing, the plaintiff filed the revised valuation report and it showed that the findings of fact, previously transcribed by Honorable Judge Calderón, had not been taken into consideration. In light thereof, this Court ordered that the report by Engineer Orlando Flores be revised again, taking into consideration and as basis, said conclusions, which could be verified on the terrain.

On January 20, 1971, the new revised valuation report was filed having given a copy of the same to the defendant when the original was filed in the Office of the Clerk of this Part.

The case being ready for hearing, this Court scheduled the hearing on the merits of the case to be held on April first, 1971, at 2:30 P.M.

On said day, calling the case, the plaintiff appeared represented and assisted by counsel and expert appraiser and the defendant appeared represented and assisted by counsel.

The testimony and documentary evidence was presented by both parties, which is in the record, and after an in-depth analysis of the evidence entered, the Court makes the following conclusions of fact.

Conclusions of Fact

1. The parcels expropriated have a superficial capacity of 337.7225 “cuerdas”. Said lands are located in the Juan Sánchez Ward of Bayamón and Santa Rosa Ward and Los Frailes Ward of the municipal term of Guaynabo. Originally they all had bounds between each other thereby forming a single body, but when State Road No. 177 was built, also known as Los Filtros Avenue and Lomas Verdes Avenue, said terrain became fragmented into two portions. Each portion constitutes a single unit in itself, susceptible to being sold, fractioned or developed independent from the other.

2. The North portion has a capacity of 199.7710 “cuerdas”, in bounds on the North with Polvorín Roadway, and with land from the Urbanization Jardines de Caparra, with a street from Urbanization Jardines de Caparra(1) on ~~the~~ South with Lomas Verdes Avenue; on the East with land of Pan American Investment, previously, today land belonging to the Land Administration of Puerto Rico, acquired through an eminent domain expropriation proceeding held in case E-63-1663 and on the West with the Bayamón River.

3. The South portion has a capacity of 137.9515 “cuerdas” and bounds on the North with Lomas Verdes Avenue; on the South with the Bayamón River, with Rafael Concepción and others; on the East with land belonging to Pan American Investment (today Land Administration), with other land belonging to Engineer Jorge I. Rosso and with those of Enrique Martínez, and on the West with the Bayamón River.

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(1) The Planning Board demanded for the development of the Jardines de Caparra Urbanization an elevation of the lands of thirteen meters of leveling. Mr. Rosso's lands were leveled at 13 meters following the requirements that the Planning Board demanded from the bordering developer and there is no expropriated land below said elevation.

4. Both portions have an ample front side to State Road No. 177, also known as Lomas Verdes Avenue. They are rather regular in form, and their topography is very leveled. They enjoy the services of electricity, water, as well as telephone lines which run through the referred State Road. They have transportation facilities and are only lacking sewer service, to which we make reference hereinafter.(2) (3)

5. The parcels form part of a neighborhood which exhibits extraordinary growth, both in its residential aspect, as well as in the industrial and commercial phases. They have been zoned R-1, for low density residential use. Although this is not the most appropriate zoning for the best use to which this land might be used, the same are completely graded and with a level superior to that of State Road No. 177 throughout its whole front. (4)

6. The expropriated parcels are affected by easement for electrical cables, as well as water pipelines in favor of the

---

(2) The Lands Administration corroborated that the physical conditions of the terrain agree with the findings of fact of Honorable Judge Calderón.

(3) The portions, as have been described by the expert appraiser, are comprised under the Registry by eight independent parcels of land. Their unit of access, owner and the fact that they bound with each other, is an advantageous factor for the parcels of land, which may very well be considered, as we have considered, as two units or for purposes of their disposal may be considered individually.

(4) Along the bounds appearing in the docket, these properties [illegible] including commercial residential [illegible] of high and low density, as well as public uses.

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Puerto Rico Electrical Authority and the Aqueducts and Sewers Authority of Puerto Rico, respectively.(5)

7. The parcels enjoy good water drainage for their natural waters, which rapidly flow without being subject to stagnation.

8. Both, the soil, as well as the subsoil, are firm and compact, for which reason there is no need to drive piles or design special struts for construction of residences, either one or two storied, nor for the construction of industrial or commercial buildings.

9. It has been shown, through statistical data, that the population growth of Bayamón and Guaynabo was the most intense in the Metropolitan Area, with the exception of Cataño, during the last years.(6)

10. On the date of the expropriation, the neighborhood where the expropriated parcels were located lacked sanitary sewer service.(7)

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(5) In the case E-63-192 of this Court, the Commonwealth of Puerto Rico expropriated an easement of access for high tension electrical lines which were relocated upon request of defendant Jorge I. Rosso and his wife, Carmen Dolores Descartes along the place were they currently run to minimize any damage that may be caused which the establishment thereof.

(6) See exhibit Defendant Exhibits "R" and "E", memorandum of Mr. Ramón García Santiago, by then President of the Planning Board of Puerto Rico to the then Governor, Honorable Luis Muñoz Marín; and letter of Honorable Roberto Sánchez Vilella to Mr. Roberto Martin dated May 17, 1963.

(7) It has been called to the attention of this Court to take judicial knowledge and accept the findings of facts of the case Commonwealth of Puerto Rico vs Pan American Investment L-63-1663, pertaining to the water

11. The appraisal method to be used in this case is constituted by comparable and contemporaneous (8) sales which the Court has given its approval, which are the following:

A- Sale No. 1

This is a parcel of land located in the Pueblo Viejo Ward of Guaynabo, with a superficial capacity of 50.26 "cuerdas" which was sold by Isla Verde Investment Corp. to Labrada Construction Corp. by deed number 35 executed on October 2, 1963 before Notary Enrique Córdova Díaz, for the price of $901,000.00, that is, an average of $17,926.78 per "cuerda".

The best use for this parcel is for a residential development (R-3) for single family residences.

This parcel required landfill, did not have drinking water facilities , had plans approved for development as of the date of the sale. Lacking sanitary sewers and its location with regards to the urban nucleus of San Juan, Santurce and Rio Piedras was

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sewer system of the neighborhood, where it is set forth that the Aqueduct and Sewer Authority had approved the construction of a treatment plant in the [illegible] of the Bayamon River, sufficient to provide service to [illegible]. The treatment plant was to be placed on the expropriated lands of this case.

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(8) There is no doubt that there is abundant evidence in this case that as of the date of the expropriation, the lands object of this action were prepared and ready to start the development of the project.

somewhat superior to the ones expropriated and although it did not face State Road No. 2, it is at a short distance thereof.

B- Sale No. 2

This parcel is located in the Juan Sánchez Ward of the Municipality of Bayamón. It has a capacity of 313.18602 "cuerdas" and through deed number 4 executed before Notary Robert M. Baker on October 5, 1961, Island Construction Corp., sold this land to Flamboyán Gardens Inc. for the price of $2,145,163.50, which gives us an average per "cuerda" of $6,849.49.

This parcel had drinking water and sewers, as well as electricity.

This parcel was crossed North to South by the Río Hondo and a great portion thereof was floodable. The River had to be channeled and make earth movement. Its location was inferior and two and a half years elapsed between the transaction and the expropriation.

C- Sale No. 3

By means of deed number 46 executed before Notary José M. Ramos on December 11, 1962, Victor Rivera Santiago sold to Developer Gardenville a parcel of

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23.30 "cuerdas" zoned R-3, and located at the Pueblo Viejo Ward of the municipality of Guaynabo, for the price of $221,350.00, that is, at the ratio of $9,500.00 per "cuerda".

On the date of the sale, there had already been approved a project for residential use for this parcel. It had no sanitary sewer service, but it did have water, electricity and telephone facilities. It required earth movement and although they compare in location, one year passed between the transaction and the expropriation.

D- Sale No. 4

By deed number 33 executed on May 8, 1963 before Notary José A. Luiña, Gilberto Selorse sold to West Indies Development Corp. a lot of 21.36 "cuerdas" located in Los Frailes Ward of Guaynabo, at Alejandrino Road, for the price of $360,000.00, that is, at the ratio of $16,853.93 per "cuerda".

It did not have sewer facilities and required a lot of earth movement. They had equal location and a term of seven months elapsed between the transaction and the expropriation.

E- Sale No. 5

By means of deed number 17 executed on March 30, 1962, before Notary Carlos A. Vallecillo, Torrimar Construction Corp. sold to Developer Damiró Inc. a lot of 233.58 "cuerdas" located at the Pueblo Viejo and Juan Domingo Ward in Bayamón and Frailes Ward in Guaynabo, for the price of $2,400,000.00, that is, at a ratio of $10,275.00 per "cuerda". These terrains were zoned as residential (R-3).

F- Sale No. 6

By means of deed number 2 executed on January 31, 1963 before Notary Celestino Morales, Jr., Arturo Ortíz Toro sold to defendant herein, Jorge I. Rosso, a lot of land of 26.687 "cuerdas" located in the Santa Rosa Ward and Los Frailes Ward of

Guaynabo for the price of $160,134.00, that is, at the ratio of $6,000.00 per "cuerda". It had a residential zoning (R-1).

This lot, which was not expropriated, lacked sanitary sewer and water facilities, in addition to requiring earth movement. It bounds with the expropriated terrains.(9)

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Superior Court San Juan Part]

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(9) This lot [illegible] studied and although comparable to the subject by adjudication, we have not given any weight whatsoever in our conclusion to its value because the buyer is the defendant in this case [illegible] of his sale at all, alters our conclusion [illegible], because we consider that

12. In the expropriated land, there exists throughout the length of its West boundary with the Bayamón River, land from where gravel and sand may be extracted for the construction of any project that is carried out in said land.

There was in said sector some machinery that served these purposes.

None of the comparable sales enjoyed said condition.(10)

13. On the date of filing of the case, December 5, 1963, the amount of $1,379,886.00 was deposited as the estimate of the compensation to be paid for these properties. The appraiser concluded that the estimate of value as of December 5, 1963 was the amount of $5,905,560.00, that is, a difference of $4,525,674.00.

14. The Court's attention has been called that the parcel of land analyzed as Sale No. 6, has bounds with the expropriated parcels. Forming part of the projected development and also, it belonged to defendants herein who could take advantage of the theory of usage unit, owner and contiguity for the benefit of this parcel.

The referred parcel was not expropriated and it is located on the South of those expropriated facing State Road No. 833 on its Eastern boundary.

The owner of this parcel had a right to service from the facilities and services in its development of the expropriated parcels and of obtaining those means of

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the five sales analyzed are sufficient to determine our appraisal conclusion.

(10) The appraiser, in his report states that he studied the fact but did not take it in consideration in his appraisal conclusion.

communication that would provide access to Lomas Verdes Avenue.

As a matter of fact and of law this Court rules that the parcel Sale No. 6 has a right, as consideration for this judgment, to use all of the facilities and services of any development that is ~~made in the expropriated land.~~

15. The Court has considered, studied and analyzed all of the facts of the case, as well as all factors inherent to the determination of value such as: location, services, zoning, best use, facilities, topography, soil consistency, means of communication and transportation, etc., etc., and determines that based on this, defendants are entitled to receive the amount of $8,096,856.56 for their property.(11)

16. Having this Court concluded that the defendants are entitled to receive the amount of $8,096,856.56 and having deposited upon the filing of this case $1,379,886.00, the plaintiff will deposit an additional amount of $6,716,970.56, which shall be made available to the defendants.

Conclusions of Law

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1. This Court has jurisdiction over the parties, as well as over the subject matter of the case.

2. The Commonwealth of Puerto Rico is empowered by law to acquire these properties by the procedure of eminent domain expropriation, for public use and the purposes or purposes for which these properties were acquired is of a public nature.

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(11) The State reviewed its appraisal value on January 20 1971, as ordered by this Court. As of this

3. The plaintiff is obligated to pay interests at 6% annually over any additional amount that is granted by judgment to the defendant in the proceedings of eminent domain expropriation. (See footnote 11, above).

Having entered the above conclusions of fact and of law, the Complaint is granted and we now enter judgment with the following rulings:

Judgment

1. It is hereby declared and decreed that the title of absolute domain over the properties object of this action was invested on the Commonwealth of Puerto Rico, for the use and benefit of the Lands Administration of Puerto Rico.

2. It is decreed the fair constitutional compensation to be paid to the defendant is constituted by the amount of $8,096,856.56.

---

date, the State estimated that the value of the lands expropriated on December 5, 1963, was of $5,905,560.00, amount which the State was obligated to deposit as of the referred date. Not having deposited this difference, the State is obligated to pay interests thereon, which have been determined in the amount of $1,991,296.56.

The total amount of the $8,096,856.56 constitutes the fair constitutional compensation that the defendants are entitled to, which amount is final and include everything and disposes of all of the claims of the parties with interest in the case.

3. The plaintiff is ordered to deposit an additional amount of $6,716,970.56. (See footnote number 11).

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General Court of Justice
of Puerto Rico
Superior Court San Juan Part]

4. When withdrawal of the funds deposited was performed, the other defendants and persons or entities with interest were eliminated, remaining only Mr. Jorge I. Rosso and his wife Carmen Descartes.

This judgment is entered without costs.

REGISTER AND NOTIFY.

Entered in San Juan, Puerto Rico, on April 12, 1971.

(Sgd} Domingo
Raffucci
DOMINGO
RAFFUCCI
JUDGE

I CERTIFY:
BELEN BONIT
CLERK

By: [Signature]
Deputy Clerk

FOR OFFICIAL USE

I CERTIFY that the foregoing is a true and exact copy of the original the records [illegible] for official use of the Department of Justice.

Given at San Juan, today, April 12, 1971.

BELEN BONIT
Clerk

[Signature]
Deputy Clerk

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Ink Time Stamp]

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Ink Time Stamp]

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General Court of

Justice Superior
Part of San Juan

G.D.B.
OFFICE OF THE DEPUTY COMPTROLLER
00 SEPT 27 PM 1:32

DUBÓN & DUBÓN
N[illegible]H FLOOR, BANK TRUST PLAZA
HATO REY, PUERTO RICO 00918
TELEPHONE (787) 758-2826
TELECOPIER (787) 754-6698

LUIS E. DUBON
LUIS E. DUBON, JR.
LUIS E. DUBON, III
ISMAEL H. HERRERO, III
MIGUEL G. LAFFITTE
LUIS M. [illegible] VILA
KRISTINA VIVONI GIROD

SAN JUA

HAND DELIVERED
COPIES BY CERTIFIED MAIL WITH RETURN RECEIPT REQUESTED

September 27, 2000

Mr. Amaury Díaz
Finance Director
Government Development Bank
Minillas Government Center
Santurce, Puerto Rico

Dear Mr. Díaz:

We represent Mrs. Carmen Rosso de Irizarry, daughter and heir of Mr. Jorge Rosso (r.i.p.). On or about April 12, 1971, Honorable Judge Domingo Rafucci, of the Superior Court of Puerto Rico, San Juan Part, entered Judgment in consolidated cases numbers: E-63-1652, E-63-1655 and E-63-1656, by virtue of which the Government of Puerto Rico was ordered to deposit an additional sum amounting to $6,716,970.56, for a total payment to Mr. Rosso of $8,096,856.56, for the expropriation propitiated by the referred cases.

Pursuant to what was published in a newspaper of general circulation, it is notified that the Government Development Bank has invited to receive proposals to hold an auction by virtue of which they intend to sell the land expropriated from Mr. Jorge Rosso in cases E-63-1652, E-63-1655 and E-63-1656.

Section 31a of Title 28 of the Laws of Puerto Rico Annotated, (28 L.P.R.A. sec. 31a) establishes the preferred right of the previous owners, or their heirs, to repurchase the expropriated land at the same price they were originally purchased for public use.

This letter serves as the formal notice of the firm intention of our client to exercise her preferred right to repurchase the mentioned land.

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Mr. Amaury Díaz
September 27, 2000
Page Two

I will deeply appreciate it if you contact the undersigned as soon as possible so that we can discuss the details. I must also state that should you not honor the preferred right of our client, we will appear before the pertinent forums in order to enforce her rights, also advising you that you will be liable for the expenses, costs and attorneys' fees the process may generate.

Awaiting for your communication, I remain,

Cordially,

[Signature]
LUIS E. DUBON, III

c. Mrs. Carmen Rosso de Irizarry
Hon. Pedro Rosselló González
Mrs. Lourdes Rovira

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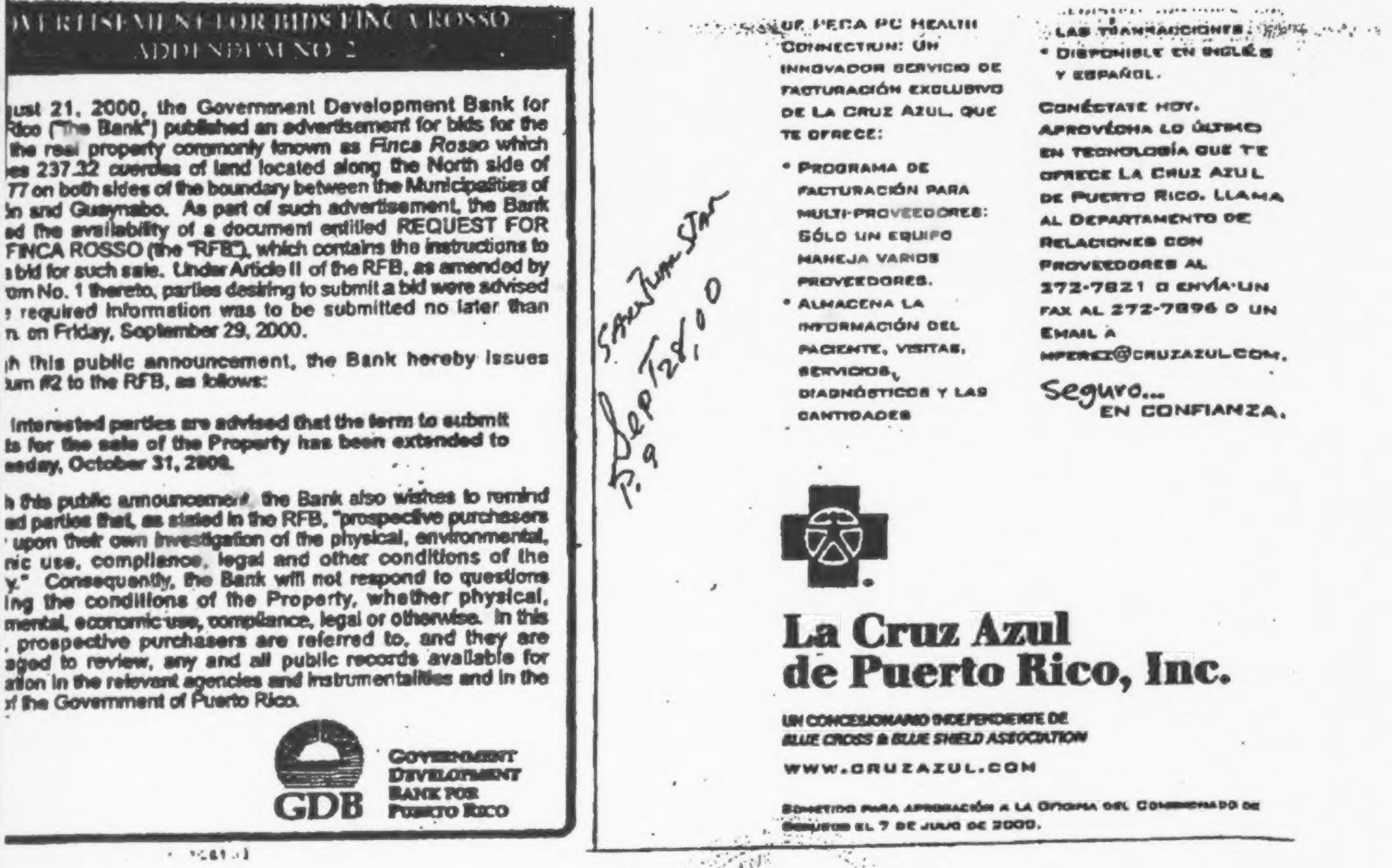
EXHIBIT



VERTISEMENT FOR BIDS FINCA ROSSO
ADDENDUM NO. 2

gust 21, 2000, the Government Development Bank for Rico ("The Bank") published an advertisement for bids for the the real property commonly known as *Finca Rosso* which es 237.32 cuerdas of land located along the North side of 77 on both sides of the boundary between the Municipalities of n and Guaynabo. As part of such advertisement, the Bank ed the availability of a document entitled REQUEST FOR FINCA ROSSO (the "RFB"), which contains the instructions to a bid for such sale. Under Article II of the RFB, as amended by um No. 1 thereto, parties desiring to submit a bid were advised required information was to be submitted no later than n. on Friday, September 29, 2000.

h this public announcement, the Bank hereby issues um #2 to the RFB, as follows:

Interested parties are advised that the term to submit s for the sale of the Property has been extended to sday, October 31, 2000.

h this public announcement, the Bank also wishes to remind ed parties that, as stated in the RFB, "prospective purchasers upon their own investigation of the physical, environmental, nic use, compliance, legal and other conditions of the y." Consequently, the Bank will not respond to questions ing the conditions of the Property, whether physical, mental, economic use, compliance, legal or otherwise. In this , prospective purchasers are referred to, and they are aged to review, any and all public records available for ation in the relevant agencies and instrumentalities and in the of the Government of Puerto Rico.

GDB
GOVERNMENT
DEVELOPMENT
BANK FOR
PUERTO RICO

San Juan Star
Sep/28/00
P. 9

PC HEALTH CONNECTION: UN INNOVADOR SERVICIO DE FACTURACIÓN EXCLUSIVO DE LA CRUZ AZUL, QUE TE OFRECE:

- PROGRAMA DE FACTURACIÓN PARA MULTI-PROVEEDORES: SÓLO UN EQUIPO MANEJA VARIOS PROVEEDORES.
- ALMACENA LA INFORMACIÓN DEL PACIENTE, VISITAS, SERVICIOS, DIAGNÓSTICOS Y LAS CANTIDADES

LAS TRANSACCIONES.

- DISPONIBLE EN INGLÉS Y ESPAÑOL.

CONÉCTATE HOY. APROVÉCHA LO ÚLTIMO EN TECNOLOGÍA QUE TE OFRECE LA CRUZ AZUL DE PUERTO RICO. LLAMA AL DEPARTAMENTO DE RELACIONES CON PROVEEDORES AL 272-7821 O ENVÍA UN FAX AL 272-7896 O UN EMAIL A MPEREZ@CRUZAZUL.COM.

Seguro...
EN CONFIANZA.

**La Cruz Azul
de Puerto Rico, Inc.**

UN CONCESIONARIO INDEPENDIENTE DE
BLUE CROSS & BLUE SHIELD ASSOCIATION

WWW.CRUZAZUL.COM

SOMETIDO PARA APROBACIÓN A LA OFICINA DEL COMISIONADO DE SEGUROS EL 7 DE JULIO DE 2000.

No.: 2006-367 CERTIFICATE OF TRANSLATOR

I, Mayra Cardona Durán, of legal age, single, resident
Guaynabo, Puerto Rico, Certified Interpreter of the United Stat
District Court and certified member of the National Association
Judiciary Interpreters and Translators, and admitted to the Puerto Ri
Bar Association, hereby CERTIFY: that according to the best of
knowledge and abilities, the foregoing is a true and faithful renderi
into English of the original Spanish text which I have translated and
is stamped and sealed as described herein. This document is compris
of Twenty Seven (27) pages, including this certification page, and d
not contain changes or erasures.

In Guaynabo, Puerto Rico, today, Wednesday, April 26, 2006.

Lcda. Mayra Cardona
United States Courts Certified Interpreter
NAJIT Certified Interpreter & Translator
3071 Alejandrino Ave. PMB 306 Guaynabo, Puerto Rico 00969-703
Tel & Fax: (787) 789-7363 Cel: (787) 530-1414
email: mayra@cardona.com

ANNEX B

Commonwealth of Puerto Rico
AT THE REGIONAL COURT OF APPEALS
BAYAMON JUDICIAL
PANEL VI

CARMEN T. ROSSO
DESCARTES aka CARMEN
ROSSO DE IRIZARRY

Respondent

v.

(GOVERNMENT DEVELOPMENT BANK FOR PUERTO RICO;
LANDS ADMINISTRATION; DEPARTMENT OF TRANSPORTATION AND
PUBLIC WORKS; DEPARTMENT
OF HOUSING; PLANNING BOARD; REGULATION AND PERMITS ADMINISTRATION

Petitioners

KLCE200401540
CONSOLIDATED
WITH
KLCE200500182
KLCE200500186
KLCE200500187

Certiorari
proceeding from the
First Circuit Court, Superior
Part of Bayamón

KLCE200401540 KLCE200500182
KLCE200500186 KLC200500187

CIVIL NO.
DAC2000-1263 (404)

Re:
Declaratory judgment:
Recovery of Land for Preferred Right; Compensation for Damages;
Nullity of Sentence; Nullity of Deeds and Contracts

Panel comprised by its Chief Justice Sánchez Martínez, Justice Fraticelli Torres, and by Justice Martínez Torres.

Fraticelli Torres delivered the opinion of the Court

JUDGMENT

In San Juan, Puerto Rico, on March 31, 2005.

The case at bar combines four *certiorari* recourses which originated in the lawsuit filed by *Carmen T. Rosso Descartes a/k/a Carmen Rosso de Irizarry v. Government Development Bank and others,* DAC2000-1263 (404), that is currently being tried at the Court of First Instance, Superior Part of Bayamón. They all have their historical beginning in the expropriation of land authorized by the Supreme Court of Puerto Rico in 1967 on the known case Commonwealth *v. Rosso.* 95 D.P.R. 501 (1967). On this occasion, the plaintiff and respondent, Mrs. Rosso Descartes, filed a lawsuit for declaratory judgment and other remedies on October 30, 2000, subsequently amended on March 10, 2003 against eight groups of defendants, among them, the Government Development Bank for Puerto Rico, the Lands Administration, the Commonwealth of Puerto Rico, the Department of Transportation and Public Works, the Department of Housing, the Municipality of Bayamón, and the Commission for the Development of the Bayamón River, as well as an extensive list of known and unknown defendants. Among these are governmental officers, contractors, developers, and partners in their individual capacity, law offices, lawyers, and notaries.

In order to dispose of the four consolidated recourses by this resolution, we will summarize, in the first section, the historical antecedents that establish the cause of action, as well as the basic right applicable to the concurrent controversies before us. Later, in separate sections, we shall dispose of the matters brought forth before our consideration regarding the three resolutions originating the different petitions for *certiorari*.

I

Having its origins in the cited opinion of Commonwwealth *v. Rosso,* we have resorted to its text to review the essential facts that act as antecedents for the case at bar.

On December 5, 1963 the Commonwealth of Puerto Rico filed a suit of eminent domain expropriation for the use and benefit of the Lands Administration, a government agency of the Commonwealth of Puerto Rico established by Act 13 of May 16, 1962, 23 L.P.R.A. sec. 311(a) *et seq.* The expropriation lawsuit, directed against real estate property belonging to Mr. Jorge Rosso and his wife, Mrs. Carmen Descartes, the principals of the respondent was filed under Act 13 and the General Act of Eminent Domain Expropriation current at the time. As it appears in the cited opinion:

> It was stated for the record in the lawsuit that the Executive Director of Lands Administration deemed useful, necessary, and convenient to fulfill the goals and purposes for which the Administration was created, *to acquire the aforementioned properties and specifically, with the purpose of assigning them to the habilitation and efficient use of new areas for the needs of the community, creating adequate land reserves to help the Commonwealth of Puerto Rico carry out its public policy as to any other purposes directed in achieving the purposes of the Act created by the Lands Administration and that the acquisition of the properties object of this action is of public need and usefulness and meets the goal of the Administration.*

> Together with the lawsuit a statement was filed for the acquisition and immediate return of the property, signed by the Governor of Puerto Rico wherein it was stated for the record that the properties would be acquired by the Commonwealth of Puerto Rico for the use and benefit of the Lands Administration in order to fulfill the purposes for which it was created and specifically for the habilitation and efficient use of new areas for the needs of the metropolitan area community of San Juan and to direct the projects Administration in compliance with state and federal agencies with the municipal government or with individuals and to create adequate land reserves to help the Commonwealth of Puerto Rico achieve its public policy and for the performance of any programs directed to reaching the objectives of Act No. 13 of May 16, 1962 creator of the Administration.

Commonwwealth *v. Rosso* 95 D.P.R. pages 503-504. (Our emphasis.)

The purposes of the expropriation being questioned, the Supreme Court considered appropriate those stated in Act 13 and when repealing the judicial ruling that denied the expropriation, it ruled that:

> The error lay in that [the sentencing court] disregarded that the defendant's land was not expropriated as part of a mechanism to provide a *situs* or fund for a specific work. For this purpose, Act No. 13 was necessary. The State could expropriate it under regular legislation.
>
> *It disregarded that in this case the land itself is the source and the object at the same time of the evil or the socioeconomic problem that the Legislative Assembly wanted to face with this legislation, and with the creation of the Lands Administration.*

Even if the doctrine were completely contrary, and the courts had broad discretion to judge and contradict the legislative criteria regarding public usefulness and need, in the supposition, we repeat, that said functions pertain to us, in light of the facts in the record, the judicial criterion could be none other but full concurrence with the legislative judgment.

Our judges, as well as our executive and legislative officers, as well as the most humble of citizens in the community, also know of the growing problems in concentration of human beings in the growing city and their needs for public and social services; those of traffic and means of communication; of the basic need for family housing, and the unending problems and adjustments capacityistic of a society in movement.

They also know how other unequal economic forces, when one of them is in clear disadvantage before the power of the other, cannot establish, by the law of neutralization and balance, free prices in open competition, but that rather usury, speculation and hoarding arises and prices artificially inflated for the benefit of the speculator.

They know that, by reason of human nature, together with the Christian investment or capital which creates a source of richness and well-being and that gives life, although with the fair right to a profit, walks the capital of the less-than-Christian speculator, with goals that are merely selfish for a single particular benefit.

The Court had the opinion.... *that Act No. 13 and its means and methods are none other than a mechanism in the hands of the State to freeze and regulate the price of land. If through freezing or regulation of land prices a*

> *rational means of resolving the problem attacked is produced, there is nothing unconstitutional in it. The same if in order to remedy the evil the Lands Administration must become a trafficker of lands, even when it is just to maintain them in reserve as prevision of the future, and all this is for the social benefit, there is nothing unconstitutional in it so being.*

Commonwwealth v. Rosso, 95 D.P.R., at pages 538-539. (Our Emphasis).

Based on these arguments, the Supreme Court declared Act 13 and action of the Lands Administration, backed by the then Planning Board constitutional, to acquire the lands and keep part of them in reserve for future urban territorial planning. It was clearly stated in the opinion that that purpose in itself justified the expropriation. That forum disregarded that the lands had to be engaged in a specific work or had to respond to an immediate or traditional public usefulness. The acquisition of land for its reserve and subsequent disposition, pursuant to the plans of integral development of the Metropolitan Area through *public or private* developers, was *the public purpose in itself* that justified that governmental action. Therefore, the Court concluded that:

> i. Act No. 13 of May 16, 1962 is constitutional in all its aspects, means, and manners. It constitutes a legitimate use of public power in protection of what, for a community of 2,712,808 (citation omitted) human beings fighting in a small territory of 3,435 square miles, is their most precious value for survival: vital space.
>
> ii. The creation of the Lands Administration of Puerto Rico and the powers and faculties it exercises to enforce the goals and purposes of Act No. 13 of 1962 are constitutional.

iii. The works, projects, powers, faculties and prerogatives of the Lands Administration of Puerto Rico created and exercised for the compliance of the purposes and goals of the Legislative Assembly perpetuated in Act No. 13 of 1962 are works, projects, powers, faculties and prerogatives invested of public interest and social benefit.

iv. The "Scope of the Project" of the Metropolitan Area of San Juan, submitted to the Planning Board by the Lands Administration and approved by the Planning Board on January 23, 1963 (Plan, Annex (A) is covered in public interest and social benefit.

v. *All acquisition of land by the Administration geared to meeting the provisions of Act No. 13 of 1962 is of public interest and social benefit for which eminent domain may be used.*

vi. The Commonwealth of Puerto Rico is entitled to retain the title of domain over the expropriated property it acquired on December 5, 1963; and is entitled to the immediate access of the material possession of said property.

vii. The respondents Mr. and Mrs. Rosso are entitled to a fair constitutional compensation as much as the fair compensation is established by the Judicial Power. *Cf. Monongahela Navigation Co. v. United States, 148 U.S. 312.327: United States v. New River Collieries, 262 U.S. 341. page 343. Commonwwealth V. Rosso,* 95 D.P.R., on pages 540-54. (Our emphasis.)

The Supreme Court ordered the absolute eminent domain expropriation of two lots of 137.70 and 118.26 "cuerdas", respectively, and of others of 25.519 and 62.8528 "cuerdas", formed by the grouping of four minor plots, all of them with their respective deeds and access (known since then as the Rosso Property), and the case was remanded for the setting of the corresponding compensation. This amounted to $8,096,856.56, fair market value for the expropriated lots. That ruling occurred 37 years ago.

With these antecedents in mind, we carefully considered the recourses brought forth before us and we noticed that, in the case at bar, the respondent really challenges the transactions made by the governmental agencies in charge of implementing the public policy of the Commonwealth of Puerto Rico as a consequence of the judicial determination made final and binding in 1967. Proof of it is the following argument:

> 9. It is affirmed that on the Rosso Land there never were dwellings product of invasion of private land, districts, lot owners, aggregates or established communities of social interest (now known as "special communities") or of any other interest found or opposed to the dominical interests or the possession of the affected owner because of the expropriation, Mr. Jorge Rosso. *That is, there was not a strong reason for the State in performing the expropriation in favor of or to solve a particular social problem in respect to people or specific groups, immediate community sectors or need to carry any public work. What could have been achieved with only submitting the original owner to the development requirements under a Master Plan for Use of Land developed and approved by the Planning Board (the only agency authorized by the legislator to do this) was discarded and substituted for an abusive expropriation which consequently, the only beneficiary at the end of such tragic journey of this plot were other private people (the developers) without meeting any public purpose whatsoever or give the opportunity in equal conditions to the original owner to develop it identically after its*

> *recovery under the terms of Act No. 12. What happened after the expropriation was an illegal speculation of land by the government competing disloyally with the owner of the expropriated plot in a blazing abuse of power and without any social benefit. That is, the government did not promote the use and destiny of these plots to projects that inured in a social benefit nor did it completely maximize the sale of the plot for the benefit of the public treasury in the worst case scenario.*

Amended complaint, part B, no. 9, and page 7. (Our emphasis.)

> 12. All of the acts, contracts, deeds and documents executed by all the defendants *with regards to any transfer of any portion of the Rosso Farm to BGF or to any private natural or artificial person are void, illegal invalid in their object and substance, without existence or jur*idical effect whatsoever including the acts and transactions carried out subsequently with said property.

Amended complaint, at page 13.

Rosso Descartes specifically challenges the recent offer of the Government Development Bank to sell a plot from the lands that originally formed part of the Rosso Property although this agency obtained title of said lots by means of payment of a debt from the late Urban and Housing Renewal Corporation (UHRC) and of the subsequent office created for its dissolution (OLAUHRC). It also attacks the validity of a judgment that endorsed the disposition of part of the plot to a private[1] developer and of other similar private transactions such as the acquisition of an expropriated fund[2] by the Municipality of Bayamón. The success of these actions depends on the challenge of the judgment entered by the Supreme Court in the aforementioned case of *Commonwwealth v. Rosso.*

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[1] *El Jardin de Rio Piedras, Inc. v. Government Development Bank for Puerto Rico and others*, Civil Case DAC 1998-1056, Supreme Court of Bayamón (504).

The four recourses that we are to consider at this time refer to the same case and the four petitioners agree in the same essential statements sustained in their respective litigations. The first case refers to the passive standing of four government agencies, which appear as defendants in their personal capacity, and the other three recourses refer to two resolutions of the First Instance Court, Superior Part of Bayamon, which denied two petitions of summary judgment from two of the defendants, the Government Development Bank and one of the private co-defendants companies.

Let us look at the procedural incidents which individualize each recourse, to later rule in an integrated fashion the matters posed.

II

The petitioner in recourse KLCE200401540, the Commonwealth of Puerto Rico, appeals the resolution entered on January 18, 2005 by the First Instance Court, Bayamón Part, which denied the dismissal of the lawsuit against four of the sued agencies, namely the Department of Housing, the Department of Transportation and Public Works, the Administration of Regulations and Permits and the Commission for the Development of the Bayamón River, because "they lacked the legal standing to sue or be sued, regardless of the correctness under law in the process-serving of the proper summons against them and having the Court other adequate mechanisms to compel them to produce evidence pertinent to the cause of action filed."

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[2] Specifically Rosso Descartes alleges in the amended lawsuit that: "Each one of the transactions made illegally throughout the years and that affected the allege rights of the plaintiff, is a separate fact on its own; each one generates an independent cause of action and has caused damages to the plaintiff." Amended Complaint, on page 14.

On February 9, 2005 we ordered the respondent, Rosso Descartes, to show cause why we should not issue the writ of certiorari requested and repeal the appealed resolution. She appeared timely and we had the benefit of her statement.

According to Rosso Descartes' own statements, on May 1, 2003 she served, under Rule 4.4(f) of Civil Procedure, 32 L.P.R.A. Ap. III, R. 4.4(f), the Commonwealth of Puerto Rico, on behalf of the three defendant agencies, the Department of Housing, the Transportation and Public Works Department and the Regulations and Permits Administration, through delivery of copy of the complaint and process-service on the Secretary of Justice. Likewise, on August 14, 2003 the respondent served the Commission for the Development of the Bayamón River Community, by also delivering copy of the complaint and process-service on the Secretary of Justice.

Rosso Descartes sustains in her appearance to show cause that petitioners "*mistakenly believe* they have been sued in their capacity as agencies, but this has never been so". She does not consider that the Court of First Instance "has assumed jurisdiction over them in their capacity as agencies, but in their capacity as Commonwealth *[sic]*". She even argues that "the mere fact that they appear in the caption of the case does not mean that plaintiff or the CFI understand they have their own and separate artificial personality than that of the Commonwealth". For Rosso Descartes, "it has always been clear that the codefendant is the Commonwealth, but truly, in a complex case such as this one, where the Commonwealth acted fraudulently through, not one, but several specific agencies, it has been necessary for plaintiff to adequately identify them. since their actions are attributable to the officers of each one of them in particular, even if all appear as officers of the Commonwealth". The complaint speaks for itself and they appear as main defendants, although the Commonwealth has opportunely appeared to assume their representation.

Although the inclusion of the referred agencies had "as a purpose to facilitate the handling of the lawsuit through the Department of Justice, entity authorized to defend the

Commonwealth and its agencies or public instrumentalities", as Rosso Descartes alleges, it is proper to dismiss the cause of action due to the arguments proposed by the petitioner. The interests of the appealed would be equally served by directing her cause of action against the Commonwealth. See the enabling laws of the four agencies: Act 97 of June 10, 1972, as amended, 3 L.P.R.A. sec. 441 et seq.; Act 76 of June 24, 1975, 23 L.P.R.A. sec. 71 et seq.; Political Code, Art. 133, 3 L.P.R.A. sec. 411 et seq.; Executive Order of September 17, 1981, Administrative Bulletin 3923-B. Also, *Fred and others v. ELA*, 150 D.P.R. 599, 605 (2000).

Although the ruling on this matter seems moot, because of the manner in which we dispose of the recourse, we order the dismissal of the case against defendant agencies, for the reasons stated, to continue against the Commonwealth of Puerto Rico, in the causes of action that may remain in effect.

III

Recourses KLCE200500182, KLCE200500186 and KLCE200500187 challenge the ruling entered on January 18, 2005 by the Court of First Instance, Bayamón Part, which denied the motion for partial summary judgment filed by the Government Development Bank of Puerto Rico (GDB), in order to dismiss the complaint filed by the respondent in this case. It had already previously come before this forum, through recourse KLCE200100346, the issuance of which was denied under Rule 40 of the Regulations of the Circuit Court of Appeals, 4 L.P.R.A. Ap. XXII-A, by resolution of May 22, 2001 (Panel comprised by its Chief Justice Arbona Lago, and Justices Urgell Cuebas and Aponte Hernández).

Because we understand that at this time, the conditions exist for us to consider the matters stated on their merits, we proceed to do so.

- A -

Pursuant to the petition for *certiorari* number KLCE200500182, filed by the GDB, it was proper to grant the motion for summary judgment because Rosso's claim is time-barred; Act 12 of 1975, on which Rosso Descartes bases her claim, is not applicable to this controversy; and the land subject of this case never lost its public usefulness. The GDB alleged that "[I]n essence, the argument used by Rosso Descartes to base its right of redemption almost four decades later, after the land was expropriated is that, according to her, they have exhausted their public usefulness. This, even though the Commonwealth, together with government agencies, public corporations and, since 1982, with private entities, has used these lands to achieve a main objective: the orderly and planned development of the expropriated area". Petition for *certiorari*, at page 2.

The appealed court based its denial in that a controversy of facts existed on whether the property object of the litigation still conserved its public usefulness. It specifically ruled:

> After examining this case in light of the jurisprudence previously set forth, we rule that it is not proper to issue a summary judgment to end the controversies between the plaintiff and the GDB. In summary, we understand that controversy exists with regards to whether the remnant of the Rosso Farm, the possession of which is held by the GDB, lacked public usefulness at the time of the publication of the [notice of auction] or in any sales event or transfer of domain by the GDB of any portion of land of the expropriated Rosso Farm it had acquired.

Resolution of January 25, 2005, at page 12.

The appealed forum also based its resolution on the statements made by this court's panel which entertained the matter in 2001, although it did not consider it in its merits. From our resolution of May 22, 2001, it highlighted the following:

> On the other hand, the matter pertaining to whether the Rosso farm has stopped being of public usefulness, pursuant to the juridical meaning of said terminology, is not a matter that can be elucidated at this stage of the proceeding and through motion

> under Rule 10.2 of Civil Procedure, 32 L.P.R.A. ap. III, R. 10.2, pursuant to the particular allegations of case DAC2000-1263, before us. Likewise, the statement that "...our residences must be developed at the Rosso farm, subject to the Master Plan approved by the Commission for the Development of the North Bayamón River Community", does not necessarily imply that the Rosso farm is still subject to the mentioned plan of territorial development, which in like form and manner affects every other terrain in the same territorial demarcation, whether or not it was previously expropriated by the State.

Resolution of May 22, 2001 of the Circuit Court of Appeals, KLCE200100346, at page 7.

The GDB sustains in its petition "that the question of whether or not the property in dispute in the above captioned case maintains its public usefulness constitutes a controversy of [l]aw and not of facts. So, then, the question that the Court of First Instance had to ask itself was whether the fact unchallenged by the plaintiff (and accredited through multiple documents) that the property at issue has been, and is, subject to a Master Conceptual Plan directed to the organized and planned development of the area constitutes sufficient justification in [l]aw to affirm that said property still maintains its public usefulness. Said analysis, in turn, would have to take into account the multiple statements that the Supreme Court of Puerto Rico has made with respect to the definition of the concept of public usefulness". Petition for *Certiorari*, at page 10. The GDB concludes in its petition that "the property in dispute still maintains its public usefulness and, therefore, cannot be subject to the referred repurchase right claimed by plaintiff". *Id.*

Making reference to the opinion in *Commonwwealth v. Rosso*, 95 D.P.R., at page 540, the GDB argues that "it was sufficient for the Organic Act of the Lands Administration, agency for which the expropriation was being done at that time, to declare that the purchase met the provisions of public interest and social benefit set forth in the Organic Act of said agency". *Id.* It emphasizes, among the cardinal purposes of the Organic Act of the Administration; that of creating adequate land reserves to help the Commonwealth of Puerto Rico to perform its public policy on urban development. Therefore, it argues, also, that "the sale of the remnant of the Rosso Farm by the GDB pursues two public purposes: first, that said public corporation be able to comply with its duties established in its Organic Act and, second, that the property in dispute may be able developed in an organized and integrated fashion, in accordance to the Master Plan approved by the Commission for the Development of the North Bayamón River Community. The development of the property in dispute seeks, then, the community in general may take advantage of this evident public purpose. [Citations omitted]. Whether or not said Master Conceptual Plan attributes public usefulness to the land subject of this controversy constitutes a matter of [l]aw and not of facts which the Court of First Instance should elucidate." *Id.*, at page 13.

- B -

In the recourse KLCE200500186, filed by the Lands Administration, it appeals the same resolution as the GDB and another that denied the request for dismissal or for summary judgment filed by one of the private defendants, El Jardin de Río Piedras, Inc. Both resolutions were issued on January 18, 2004. The Lands Administration raises in its recourse essentially the same errors as the GDB. It had already previously joined its request for partial summary judgment before the Court of First Instance and had advanced an additional argument: that the preferred right to repurchase invoked by plaintiff was extinguished with the transfer made by the Lands Administration to the URHC and that said repurchase right does not resurface with subsequent transfers to other title holders, even when they are from one agency to the other, as happened in this case. It also alleged, that Mrs. Rosso Descartes could not inherit a right that the decedents did not have, since Act 12 was approved in 1975 and the expropriation was made in the seventies.

it is interesting that, on the ownership of the Lands Administration, the appealed court indicates that "[o]nce the LA discharges its function by selling or transferring expropriated land to other agencies, under the supposition that said transfer meets the purposes of Act 13, said lands are separated with respect to ownership from the LA and they go into the general patrimony of the Commonwealth. Once they form part of said patrimony.... the provisions of Act 12 apply to them *ipso facto*". Resolution of the Court of First Instance, of January 18, 2004, at page 7.

- C -

Recourse KLCE200500187 was filed by the Municipality of Bayamón. It appeals the same resolution that denied the summary judgment to GDB and basically states the same three errors as the other petitioners, although it divides them into five allegations. In one, it adds that the court erred by determining that the Commonwealth was the one who expropriated and not the Lands Administration, and duplicates the allegation that Act 12 of 1975 is not applicable to this case, particularly, to highlight that the law expressly provides that it will not apply to previous expropriations.

The Municipality acquired part of the farm in controversy from other agencies with authority to sell them in its favor. It alleges that, because it is a governmental entity, it is not subject to plaintiff Rosso Descartes' preferred claim.

We order the consolidation of the four recourses because they deal with the same case and because we understand that consolidation contributes to procedural economy and to a more effective attention of the matters before our consideration.

IV

After a detailed analysis of the matters in controversy, we agree with the petitioners in that Act 12 of December 10, 1975 is not applicable to this case, therefore, it is proper to dismiss the causes of action arising from said legislation against the petitioners. The amended complaint, therefore, does not adduce facts constituting a cause of action under said law.

The ambitious and encompassing amended complaint has as effect to re-litigate the judgment issued by the Supreme Court in 1967. To proceed with it would constitute a collateral attack to said judgment, strategy which is inadmissible 37 years after it became firm and binding.

Based on an alleged, preferred right, born from the enactment of Act 12 of 1975, respondent Rosso Descartes challenges all sale, disposal, endeavor or transaction made by the Lands Administration and by the agencies to which it validly transferred part of the land of the Rosso Farm, even if it was done in the exercise of its public function and under Act 13 of 1962. Let us not forget that this legislation provides broad powers to purchase, as it did in 1967, and subsequently dispose of the appropriated land in a manner consistent with the prerogatives granted by the Legislative Assembly.

Respondent Rosso Descartes, based her cause of action on the preferred right of purchase acknowledged by Act 12 of December 10, 1975, as amended, 28 L.P.R.A. sec. 31 *et seq.*, to owners of expropriated land and to their heirs, in its article 1:

> Natural persons or their heirs, as well as artificial persons, to whom any department, agency, instrumentality of the Commonwealth of Puerto Rico, or Municipality has expropriated or purchased property in any other form, shall have a preferred right to repurchase their property the owner resolves to totally or partially sell the property so acquired which have ceased being of public usefulness.

28 L.P.R.A. sec. 31a. (Our emphasis).

Act 12 authorizes to "sell, exchange or encumber the land property of the Commonwealth of Puerto Rico… *that ceased being of public use*, as long as said transaction results beneficial for public interests". 28 L.P.R.A. sec. 31. Petitioners allege that, pursuant to said law, "any person from whom the Commonwealth expropriates property, shall have a preferred right to repurchase the property in question. However, in order for said right to be given, it is necessary for three requirements to be met: (1) that the property has been expropriated by the Commonwealth; (2) that the Commonwealth decides to sell or separate all or part of the property; and (3) that said expropriated property has ceased being of public use". Petition for *Certiorari*, at page 8.

The GDB's position and that of the other petitioners is that the portion of the Rosso Farm that is in possession of the GDB "has never ceased being of public use, reason why the requirement is not met so that the preferred right to repurchase provided in Act 12 arises. Said position, in turn, was supported both with judicial basis by means of documents not contested by plaintiff which unequivocally credit that the public use of the property in dispute has not ceased." Petition for *certiorari*, at page 9.

The analysis of Act 12 of 1975, effectively shows us that the conditions are not given for petitioner to make effective a preferred right of redemption of the land expropriated from the decedents. First, the land in controversy was purchased under the authority granted by Act 13 to the Lands Administration and, it being the title holder of said real estate property, it pertains to said agency to state whether the land expropriated by it has ceased to have public usefulness, something that has not occurred in this case.

Second, the GDB is not the owner to which Art. 4 of Act 12 referes. The GDB is a third purchaser of the real estate property in controversy. The Lands Administration originally transferred it to the URHC, as part of the institutional purposes that drove that agency, which later transferred ownership of the land to the BGF, as payment on a debt. The BGF could, therefore, make effective its credit on the real estate property, by means of a public auction. Act 17 of September 23, 1948, 7 L.P.R.A. secs. 552-553. it is not releasing an expropriated property that lost its original objective of public use, which is the basis of plaintiff Rosso Descartes' claim, under Act 12. The expropriation of the real estate property complied its purpose and that would be enough to dispose of the matter, under the doctrine set forth by Commonwwealth v. Rosso, but, even today, the remnant of the land continues subjected to the social and economic plan outlined by the concerned agencies since its acquisition, as the GDB admits.

Let us remember that the acquisition of the land by expropriation was done under Act 13 of 1962, in other words, under the law that created the Lands Administration, regardless that the real transfer occurred in 1975, after paying the corresponding indemnity to its owners, as stated by the appealed judge in his resolution. The judicial reality is that the Administration acquired and reserved the land, to met the purposes of the expropriation and which the Supreme Court endorsed, because the complaint began in 1963. See on this particular matter, the General Act on Eminent domain expropriation of March 12, 1903, as amended, 32 L.P.R.A. sec. 2907.

The Rosso Farm, as the Supreme Court clearly established in the case of *Commonwwealth v. Rosso*, was expropriated with a specific purpose and that immediate objective was met when the Lands Administration reserved the land in order to fight inflation and speculation of land accumulated in private hands, with the intention of timely disposing of them, when complying with the urban development plans in the Metropolitan Area by means of public and private investment. And the fact that the land was sold to private business for its development does not deny the expropriation its validity. *Commonwwealth v. Rosso, in passim; Commonwwealth v. Fajardo Eastern Co.*, 79 D.P.R. 321, 331-333 (1956); *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 243-244 (1984).

We cannot discard at this stage what was ruled in *Commonwwealth v. Rosso* and reevaluate whether in effect the governmental action on the Rosso Farm fought inflation or cheapened the cost of land, as planned. We would be questioning the wisdom and prudence of past political decisions of government agencies, judgment which, ordinarily, is forbidden to courts of justice.

Neither the Court of First Instance nor this intermediate appellate forum may impose our criteria of how things should have been done from the legislative mandate on or how we must remedy the economic loss, if any, alleged by Rosso Descartes, *Caguas Bus Line v. Sierra, Commissioner*, 73 D.P.R. 743, 750 91952); *Irizarry v. Pueblo*, 75 D.P.R. 786, 793-794 (1954); *Berrocal v. District Court*, 76 D.P.R. 38, 65, 92-93 (1954); *Passalacqua v. Mun. of San Juan*, 116 D.P.R. 618, 623 (1985). The Supreme Court of Puerto Rico had already advised on several occasions:

> The Legislature has broad discretion to determine what constitutes a public purpose and to take those measures which in its judgment promote the community's welfare. It is not a court function to state an opinion on the wisdom or convenience of a legislative measure. If it contains elements of public benefit or the purpose that it attempts to perform is of public capacity, the matter with respect to the benefit the public will receive must be resolved by the Legislature and not by the courts.
>
> [...]
>
> It is the duty of every government, to adopt such measures that are necessary to promote the welfare and defend the health of all citizens, especially those to whom their scarce means of fortune do not let them purchase a strip of land to build on it their homes. it is enough to read the pertinent provisions of our Lands Act, in accordance to which attempts are being made to expropriate the petitioners' farm, to convince us that the purpose for which the farm subject of the expropriation would be engaged is one of a public nature and that in our judgment it will greatly contribute to raising the standard of life in our working classes.

McCormick v. Marrero, Judge, 64 D.P.R. 260, 267 (1944).

> The judicial function of reviewing legislative determinations of what constitutes a "public use" in the imposition of taxes is extremely reduced. To the

> usual criteria of self limitation which guide "the serious and delicate judicial function" of judging the constitutional validity of legislative measures - *Commonwwealth v. Aguayo*, 80 D.P.R. 552, 595-597 (1958) - joins in this case the special circumstance that the legislator's determination has as a base varied elements of public policy *the scrutiny of which is outside the competence of the judges.*

P.I.P. v. C.E.E., 120 D.P.R. 580, 609-610 (1988).

In the federal jurisdiction, the United States Supreme Court has ruled that the requirement of "public use" of the clause of eminent domain expropriation contained in the Fifth Amendment of the Constitution of the United States, is adjacent to the power to regulate, and courts should not invalidate an eminent domain expropriation made by the State on the basis that it will not be for "public use", if said expropriation "is rationally related to a conceivable public purpose". *National Railroad Passenger Corp. v. Boston and Maine Corp.*, 503 U.S. 407, 422 (1992); *Hawaii Housing Authority v. Midkiff*, 467 U.S. at pages 240-241.

It has been said that the term "public use" resists definitions; it is not necessarily equivalent to "public property", but it may refer to private purposes, as long as the usage plan serves some purpose that is significantly governmental. *Nichols on Eminent Domain*, Vol. 1 A-4 Sec. 4.7 (3rd Ed., Mathew Bender & Co. 2004).[3]

Therefore, we agree with the GDB that "the sale of the remnant of the Rosso Farm by the GDB serves two public purposes: first, that said public corporation is able to meet its duties established in its Organic Act and, second, that the property in dispute may be developed in an organized and integral way, in accordance to the Master Plan approved by the Commission for the Development of the North Bayamón River Community. Petition, at page 13.

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[3] At present the United States Supreme Court is considering the case of *Kelo v. City of New London*, 159 L.Ed 2d 857, 125 S. Ct. 27, 2004 U.S. Lexis 5008 (U.S. Sept. 28, 2004), which broadens even more the concept of public use that might justify the expropriation of private property for direct benefit of the state.

On the other hand, the Lands Administration is correct when it states that Act 13 of 1962 cannot be affected by the enactment of Act 12 of 1975. It's Art. 18 provides:

> In cases where the provisions of this Chapter are at odds with the provisions of any other law of the Legislative Assembly of Puerto Rico, the provisions of the latter shall prevail, *and no other law subsequently enacted shall be interpreted as applicable to the Administration, unless it is expressly provided therein.*

Act 13 of 1962, 23 L.P.R.A. sec. 311(q). (Our emphasis).

This provision binds the judicial interpreter [sic] to carefully examine the allegations of respondent Rosso Descartes, because the legislator did not make extensive the provisions of Act 12 of 1975 to the Lands Administration, for purposes of altering its Organic Act. Act 13 of 1962 even contains a provision which acknowledges the preferred right of redemption of the former owners of the properties acquired by the Administration and sets forth some particular requirements for its application. Art. 14, 23 L.P.R.A. sec. 311m(g) provides:

> (g) [...] In the event of sale of the real estate property acquired by expropriation that has ceased to be useful for purposes of this Chapter or for the public purposes of the Commonwealth of Puerto Rico or of any of its agencies, preference will be given to the previous owners of the expropriated property, or in its defect, to their heirs, subject to the conditions which, for the sale of said property, the Administration establishes. *In no case, however, shall the Administration be obligated to sell to its previous owner, or his/her heirs, at a price lower to*

> *the market value of the property in question, at the time it was sold to the Administration.*

Act 13 of 1962, Art. 14, 23 L.P.R.A. sec. 311m(g). (Our emphasis)

The owner who purchased the farm in controversy was the Lands Administration, pursuant to the faculties granted to it by Act 13 and endorsed by the Supreme Court in 1967. In order to activate the preferred right of redemption of this law, Art. 14(g), in its second paragraph, requires a prior determination of cessation of public use, determination which the Lands Administration has not made, because the purchase of the land for its eventual development independent of who would be the developer that would met the rational social purpose, constituted the public purpose or the public usefulness itself. It was so declared by the Supreme Court in the case that gives rise to this claim, *Commonwwealth v. Rosso.*

This statement, based on the forced precedent of *Commonwwealth v. Rosso*, convince us that Act 12 of 1975 is not applicable to the case at hand, and if applicable, the criteria to acquire the preferred right of redemption over the real estate property the GDB has put up for sale is not complied with. The owner who expropriated the original farm, the Lands Administration, designated it for the purpose proposed at the time of acquiring it. Even today, when it goes from the URHC to the GDB, it meets that original public purpose foreseen for the property in 1963. This case, we repeat, procuress to alter the law of the case and re-litigate a binding judgment entered 37 years ago. The appealed Rosso Descartes may bid and reacquire the property at market value, in equal conditions as any other bidder, if she wishes to participate in the urban development foreseen for the area. She cannot achieve this purpose with the intended application of Act 12.

Because of the ruling we make of the four recourses in this judgment, it is not necessary to discuss the other errors stated by the petitioners.

V

In light of what has been stated, with respect to recourse KLCE2004001540, the requested writ is issued, we repeal the resolution appealed in the case *Carmen Rosso de Irizarry v. Government Development Bank and others*, DAC2000-1263 (404), and we hereby dismiss all other causes of action raised by respondent Rosso Descartes against the Department of Housing, the Department of Transportation and Public Works, the Regulations and Permits Administration and the Commission for the Development o the Bayamón River, because said agencies lack artificial personality and have no legal standing to be sued.

With respect to recourses KLCE200500182, KLCE200500186 and KLCE200500187, the requested writs are issued, we vacate the two resolutions appealed and the amended complaint filed by appealed Rosso Descartes is dismissed, under the provisions of Act 12 of December 10, 1975, against the Commonwealth of Puerto Rico, the Lands Administration, the Government Development Bank for Puerto Rico and the Municipality of Bayamón.

The Court of First Instance is ordered to continue with the proceedings in a form compatible with the ruling made in this judgment.

[Signature]
s/Laura M. Velez Vélez
Clerk of the Court of Appeals

No.: 2006-369 CERTIFICATE OF TRANSLATOR

I, Mayra Cardona Durán, of legal age, single, resident of Guaynabo, Puerto Rico, Certified Interpreter of the United States District Court and certified member of the National Association of Judiciary Interpreters and Translators, and admitted to the Puerto Rico Bar Association, hereby CERTIFY: that according to the best of my knowledge and abilities, the foregoing is a true and faithful rendering into English of the original Spanish text which I have translated and it is stamped and sealed as described herein. This document is comprised of Two (2) pages, including this certification page, and does not contain changes or erasures.

In Guaynabo, Puerto Rico, today, Wednesday, April 26, 2006.

Lcda. Mayra Cardona
United States Courts Certified Interpreter
NAJIT Certified Interpreter & Translator
3071 Alejandrino Ave. PMB 306 Guaynabo, Puerto Rico 00969-7035
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ANNEX C

COMMONWEALTH OF PUERTO RICO
COURT OF ORIGINAL PLEAS
SUPERIOR PART FOR BAYAMON

Carmen T. Rosso-Descartes
t/c/c Carmen Rosso-de Irizarry

PLAINTIFF

Vs.

(GROUP A)
Governmental Development Bank of Puerto Rico; Lands Administration; Commonwealth of Puerto Rico; The Transportation and Public Works Department, The Housing Department; The Planning Board; The Regulations and Permits Administration;

(GROUP B)
Rio Bayamon Community Development Commission itself and **John Doe Commissioners A, B, C,** D, E and F, fictitious names of unknown people who are the true defendants, **Jack Doe Commissioners A, B, C,** D, E and F, fictitious names of unknown people who are the true defendants and are the previous through current

CIVIL NUM.: DAC 2000- 1263
Courtroom 404

FOR

A DECLARED JUDGMENT;

VINDICATION OF LANDS BY PREFERENTIAL RIGHT; CLAIM FOR COMPENSATION FOR DAMAGES AND SUFFERING; SENTENCE NULLIFICATION; NULLIFICATION OF PAPERWORK AND CONTRACTS.

members of the aforementioned commission since its creation and origin are being personally sued.

(GROUP C)
Boulevard del Rio, S.E.; J.M.F. Development, S.E.; Shabas, S.E.; Transglobe Limited Partnership, S.E.; Pieri Construction, S.E.; J.M.F. Developers, S.E.; Valles de Guayabo, S.E.; Casa Linda Associates, S.E.; Special Partnerships created under the support of the Internal Revenue Law of 1954, as amended;

(GROUP D)
The individual members of the special partnerships mentioned and included in GROUP C (above) in this complaint in their respective capacities, whose true names are unknown and are identified respectively with the following fictitious names: Boulevard del Rio, S.E.; J.M.F. Development, S.E.; Shabas, S.E.; Transglobe Limited Partnership, S.E.; Pieri Construction, S.E.; J.M.F. Developers, S.E.; Valles de Guayabo, S.E.; Casa Linda Associates, S.E

(GROUP E)
Continental Construction Corporation; D.J.S.

Corporation; Anna Developers, Inc.; Empire Housing Corporation; Fourth Development Corporation; Mora Development Corporation; Pieri Constuction Corporation; Shabas Corporation; Third Development, Inc.; Transglobe Manufacturing Corp.; El Jardin de Rio Piedras, Inc.; Blanco Enterprises, Inc.; Domestic corporations organized under laws of the Commonwealth of Puerto Rico;

(GROUP F)
The Municipality of Bayamon

(GROUP G)
Hon. Ramon Luis Rivera-Rivera, Mayor as a private individual, Mr. Carlos I. Pesquera, as a private individual; Marcos Rodriguez-Emma, as a private individual; Lourdes M. Rovira, as a private individual.

(GROUP H)
Public officials X,Y,Z, as fictitious names due to their being currently unknown, incumbents and Commonwealth of Puerto Rico heads of governmental agencies included as defendants in GROUP A (above) in this

complaint.

(GROUP I)
Lawyers, legal firms and notaries public as fictitious names who have granted agreements and signed authorizations (testimonies) on the documents described in the complaint.

All of the fictitious names will be substituted with true names as they become known

DEFENDANTS

AMENDED COMPLAINT

TO THE HONORABLE COURT:

COMES NOW the plaintiff, Carmen T. Rosso-Descartes, t/c/c Carmen Rosso-de Irizarry, of legal age, United States citizen and resident of Puerto Rico, through undersigned counsel and very respectfully expresses, alleges and prays:

INTRODUCTION

A RECORD OF THE PROPERTY, THE OBJECT OF THIS COMPLAINT ("ROSSO'S PROPERTY"):

1. In 1963, the Commonwealth of Puerto Rico(ELA) expropriated several lots of land, the property of Mr. Jorge Rosso and his wife Carmen Descartes, for alleged public use and benefit. On December 7, 1967 after extensive litigation over said expropriation, our Honorable Supreme Court handed down a decision in favor of the expropriation (**E.L.A. Vs. Rosso, 95 D.P.R. 501**) leaving pending the determination by the court of originals pleas about the value of the compensation. On April 12, 1971, the San Juan Court of the Puerto Rico Superior Court (**E.L.A. Vs. Metropolitan Construction Corporation, Jorge Rosso and His Wife Carmen Descartes, et als (consolidated**

cases Num. E-63-1652; Num. E-63-1655 and E-1656) among other pronouncements determined that just compensation is $8,096,856.56, thereby increasing the amount consigned by the ELA and clarifies that the only interested parties are Mr. Jorge Rosso and his wife Carmen Descartes.

2. In accordance with the terms of said judgment (Hon. Domingo Raffucci), the expropriated lots combined for a total surface area of 337.7225 *cuerdas* [unit of measure similar to an acre] located in the Juan Sanchez, Bayamon, Santa Clara, Guaynabo and Los Frailes, Guaynabo neighborhoods separated by State Highway #177 (Los Filtros Avenue). As a result of said separation, the northern portion of the property covers 199.771 *cuerdas* and the southern portion, the remaining 137.9515 *cuerdas*. Therefore, said lots are publicly known and we will refer to them hereinafter as the "**Rosso Property**" or the "**Original Property**.".
3. However, whatever the alleged use or public purpose for expropriating it was, the post-expropriation reality has shown everything to the contrary about the destiny of the land. The government, through its agencies, after in effect dispossessing the legitimate owner, what was really done was illegally distribute the lands by separating it into parcels, selling and transferring the property titles of said portions to private for-profit businesses without imposing any particular restriction on their use or future exploitation that would be to further social interests, use or public benefit. This also (except for the company called El Jardin de Rio Piedras, Inc. that has not been attained as of yet) they were used to build and sell private homes on the middle and middle class market. In a similar fashion to any other development in the area, said building was subject to the Master Plan designed by the government to supposedly attain its integral development.
4. In addition to the illegal segregation and sale of the parcels to private businesses, the government illegally and unjustly transferred and sold other parcels to the Municipality of Bayamon after the New Progressive Party (PNP) administration lost the general elections in 2000 but before the present administration took possession in an attempt to disassociate the title of the new central government. Previously, the government also illegally had facilitated the transfer of the undeveloped remainder of the Government Development Bank of Puerto Rico

(BGF) under the pretext of handing it over as payment for the former Housing and Urban Development Corporation (CRUV). In the case of the aforementioned municipality, it attempted to and threatened to sell its portion, also illegally acquired on the open market to unduly profit from the inflationary increases in its value. In addition, a few days before the 2000 general elections, the BGF also tried to sell its portion on the open market, seeking to illegally sell them before the new administration took possession and following the same pattern of dispossession observed before.

5. In the cases (Please see **ATTACHMENT B**) related to the sales by private developers, the government, through its agencies, sold enormous quantities of expropriated land unduly profiting from the increases in their value with respect to the amount paid when they were expropriated. Not only that, the sales were made at prices far below those on the open market which resulted in an excessive and unjust benefit for the acquiring private businesses. In other words, the booty of expropriated property enriched the government and third party private businesses at the cost of the plaintiff who suffered dispossession of the property of it s cause without having the opportunity under the law or in equity to recover or participate in the purchasing process under equal conditions to the favored third parties (presumably some "friends" of the incumbent government) on the transaction date. In addition to the illegal sales and the transactions that appear in **ATTACHMENT C**, its nullification is alleged as transactions that were carried out relate to them described as **"The Constitution of Perpetual Use Easements for Wetlands, for Utilities; Separation and Sale"** this arising from public transaction Num. 26 dated September 10, 1998 granted by the Government Development Bank of Puerto Rico (BGF) and the defendant, Valles de Guayabo, S.E. through which portions were also illegitimately sold from the Original Property. It should be pointed out that the notary public that represented both parties in said granted transaction is the same person who appears later on as the lawyer for the plaintiff , El Jardin de Rio Piedras, Inc. in the lawsuit Civil DAC: 1998-1056, Court of Original Pleas, Bayamon Court, "EL Jardin de Rio Piedras, Inc. vs. The Housing Department, The Government Development Bank and others," whose decision is being challenged in this amended complaint as

void. Before said litigation, said lawyer, in spite of being the authorizing notary public in said transaction Num. 26, communicated in writing, later, to the other party (the BGF) requiring them to **in the name of the "client" – Valles de Guaynabo, Inc.,** - alleging BGF's failure to comply with its obligations under the terms of said transaction. That is to say, that lawyer acted as the notary public representing both parties to then later be placed in a position as the lawyer for one of them and demand compliance by the other.

6. In the case before us and that is the object of this complaint, the BGF attempts to follow the same pattern of illegal dispossession observed by its directors and officials that preceded during the government administration that lost the 2000 elections and under the same legal advice trying to force the incumbent administration to continue the same illegal behavior pattern.
7. In the cases of the aforementioned sales, the government, through the agencies that sold the lands, demanded no real limitations of the developer-buyers regarding the sales price that the ultimate buyer would pay for the units and allowed the subsequent inter-corporation sales transactions to go forward and evidently the effect was to inflate the acquisition price when presented to the very same agencies to qualify them for mortgage insurance (FHA) programs. This allowed the developers to raise the price and the social class economic profile to qualify for buying them. Consequently, any nominal residue of an apparent social interest that may have existed for providing adequate housing for the social classes with more limited economic means or to avoid inflation disappeared by boldly and illegally violating public governmental policy and the concept of public use that supposedly justified the expropriation. The only thing that has happened really is that the Rosso Property is a merciless predation of private property as a product of the collusion among inept government functionaries who were poorly advised or were co-conspirators with influential people in the incumbent government administration on the date of the transactions to cannibalize the plaintiff's property and unjustly enrich themselves. All of this under the subterfuge of complying with the purpose or the public end of the expropriation. The only refuges available to the plaintiff are the country's justice system

and an adequately informed public opinion regarding this injustice.

B. PHYSICAL ASPECTS AND REGISTRATION HISTORY OF THE ROSSO PROPERTY

1. The Rosso Property originally expropriated was composed of contiguous parcels physically distributed within the geopolitical boundaries or adjacent to the municipalities of Guaynabo and Bayamon. Consequently, some of them were registered in the respective property registries of said municipalities.
2. Included herein as part of this complaint as **"ATTACHMENT A"** a graphic illustration titled **"Diagram of the Registry-Physical Relationship"** prepared based on the title searches performed on the respective sections of the Property Registry. Said illustration shows part of the flow of the tract of the dominion of the Rosso Property over the years since its expropriation in accordance with the multiple segregations, groupings and illegal sales that have been the object of having been noted or inscribed in the Property Registry. Originally (before the expropriation) the parcels (lots) that comprised the Rosso Property were inscribed in the following way:

Page	Volume	Lot Number	Registry	Area Expropriated
85	136	9,024	Guayabo	4.9665 *cuerdas*
141	183	8,841	"	7.9825 *cuerdas*
135	183	1,441	"	26.704 *cuerdas*
152	24	1,420	"	25.519 *cuerdas*
187	600	191	Bayamon	137.70 *cuerdas*
196	600	6,800	Bayamon	118.26 *cuerdas*

TOTAL: **321.13 *CUERDAS***

For the effects of this complaint, the parcels described above in the aggregate will be called the "Original Property."

4. As a result of the transactions carried out that affected the continuous physical integrity as well as the value of the property of some of the parcels, diverse residential projects whose units were sold to the general public. They did not constitute public housing, low-income housing, schools, hospitals or works of evident social benefit nor for the rehabilitation of any marginalized communities or slums.
5. Included as part of the present complaint as **"ATTACHMENT B"**, a table comprised of three sheets that **identifies the aforementioned projects and their relationship to the registry**

data for the affected parcels, the names of the projects, the title transactions, parties (including the agencies that sold them) involved, the value or transaction price and identifying the private developers and the names of the respective projects.

6. Included as part of the present complaint as **"ATTACHMENT C"**, a plan that locates the projects constructed on the several identified parcels the letters (**alpha**) in the first column of **"ATTACHMENT B"** as the relationship to the part of the Original Property (shaded area) affected.
7. Included as part of the present complaint as **"ATTACHMENT D"**, a plan titled "**Vicinity Map**" with all of the boundaries of the Original Property (shaded area) superimposed on the vicinity map that illustrates those developments that have affected or penetrated the original pre-expropriation boundaries of said property.
8. Included as part of the present complaint as **"ATTACHMENT E"**, a reproduction of a recent **aerial photograph** of the property with approximate boundaries of the Original Property delineated in order to facilitate the general location within the particular geographic area.
9. It is affirmed that on the Rosso Property there had not existed any residences as the product of trespass, slums, parceling, groupings or established communities of social interest (now called "special communities") or any other interest found or opposed to property interests or of the possession of the owner, Mr. Jorge Rosso, affected by the expropriation. That is to say, there was no pressing reason at all for the State to carry out the expropriation for the benefit of or to resolve any particular social problem of anybody or any specific social group, sector of the immediate community or the need to carry out any public project. What may very well have been achieved with merely submitting to the original owner the requirements for development under a Lands Use Master Plan developed and approved by the Planning Board (the only agency authorized by the legislature to do so) was discarded and substituted with an abusive expropriation as a consequence of which the only beneficiaries at the finale of this tragedy of this property were other private people (the developers) without fulfilling any public purpose at all or being given an opportunity under equal conditions to the original owner to develop it identically after recuperating it under the terms of Law 12. What happened after the expropriation

was an illegal land speculation by the government competing disloyally with the owner of the expropriated property through a flagrant abuse of power and without any social benefit at all. That is to say, the government did not direct the use or final purpose of these lands for projects that would result in social good or maximize to the fullest extent the sale of the land for the benefit of public funds in the worst of scenarios.

C. PARTIAL SUMMARY OF THE PRINCIPAL LEGISLATION AND LAW INVOLVED

1. Law Num. 13 of May 16, 1962. 23 l.p.r.a. s 311, et sec. ("Law 13")

[Lands Re-Administration]

(a) Article 7 (Rights and Powers)

"(q) *Acquire private property by the means provided in this la,; to reserve it for the benefit of the people of Puerto Rico for the use of the Commonwealth of Puerto Rico or its agencies. In all cases where property or rights are expropriated for specific ends in accordance with the development of public works and social benefit, said ends must be carried out within a term of years that may never exceed fifteen from the acquisition date. The property so acquired may be ceded or transferred to the Commonwealth of Puerto Rico or its agencies under reasonable terms and conditions.*

(b) Article 14:

"(g) *The provisions of Law 182, approved on May 5, 1949, nor Law Num. 441 approved on May 14, 1947 as amended will have no application regarding the properties the Administration acquired.*

In sales cases where the property is acquired through expropriation that has ceased to be useful for the purposes of this law or for purposes of the Commonwealth of Puerto Rico or any of its agencies, preference will be given to previous owners of the expropriated property or in their absence, their obligatory heirs, subject to the conditions that for the sales of said property may be established by the Administration. In no cases does the Administration have the obligation to sell to a former owner or his/her heirs at a lower price than the market value of the property when it is sold by the Administration.

....When the Administration determines that the acquired property or a part of it has ceased to be useful for public

purposes of the Commonwealth of Puerto Rico or its agencies, the person or people or their obligatory heirs from whom the property was expropriated must be notified of their preferential right to reacquire such property. The notification indicating the price and conditions of the sales offer must be sent buy certified mail if the addresses of the interested parties are known. If they are not known, notifications are to be published in newspapers in general circulation once per week for two consecutive weeks. If the announcement is published, it is presumed, subject to proof to the contrary, that the address is unknown.

....After the 30-day term has elapsed since the notification by mail or 40 days from the publication of the last announcement, said terms may not be extended. The Administration is free to dispose of the property in a way most convenient to the public interest...."

2. Law Num. 143 enacted on August 9, 1995("Law 143")[Regulations and Permits Administration ("ARPE");
3. Law Num. 75 enacted on June 24, 1975("Law 75")[The Planning Board ("JP")]
4. Law Num. 12 enacted on December 10, 1975, 28 L.P.R.A. S 31 ET SEC("Law 12"), as amended.

   [Public Lands Sales Law] including the discussion in the Senate (Daily Sessions Register) prior to its approval by said body; the Joint Report of the Government and Transportation Commissions of the House of Representatives; the Conference Committee Report (House and Senate) and the Department of the Treasury's Memorandum of Explanation (proposing agency) that accompanied the law.

   (a) Section 30(a): (Partial quotation with emphasis added)

   "*The Secretary of Transportation and Public Works may with the **previous approval** of the Governor and the Secretaries of the Treasury and Justice, sell, exchange or encumber Commonwealth of Puerto Rico property as well as the buildings under its custody that are no longer publicly useful as long as said transaction is beneficial to the public interest. **The Legislative Assembly** must issue its **approval** on all **sales** of property acquired by the Commonwealth of Puerto Rico and appraised by the Secretary of the Treasury for a value $500.000.00 or more ...*"

(Note: Section 31(o) requires in addition annual reports to the legislature.)

(b) Section 31a----Reacquisition of property: (Partial quotation with emphasis added)

"Natural people or their heirs, as well as juridical people, any department, agency, instrumentality of the Commonwealth of Puerto Rico or municipality that has expropriated or acquired property in any other way is preferentially entitled to reacquire the title to that property by the complete or partial ***sale*** *of the property to acquire it when it has ceased to publicly useful. This preferential right may not be ceded to other natural or juridical people. ... ..."*

... "When the acquisition of the title must be published to the extent of Section 31 et sec of this title to the owner of the expropriated property or acquire it by any means as well as their successors or assignees, when applicable."

(c) Section 31c --- Preferential right: notification: (Quotation with emphasis added)

> *"People with preferential rights as referred to in Sec. 31a of this title may not exercise said right in cases where any department, agency, Commonwealth of Puerto Rico instrumentality or municipality* ***reliable written report*** *to the title holder of his/her interest to acquire the property expropriated or acquired by any other means with the aforementioned exception for public usefulness, demonstrate the necessity and capacity for the acquisition and complies with the requirements to said effects as established in Secs. 31a and 31o of this title. The interested party must acquire the property within two years following the notification. The title holder as it appears in said sections regarding Commonwealth of Puerto Rico property who is the Secretary of Transportation and Public Works. Regarding the other property, the title holder will be the department, agency, Commonwealth of Puerto Rico instrumentality or municipality that has acquired the property."*

This law contains several additional provisions applicable to the facts and allegations in this complaint. Specifically, we will refer to them below together with others violated by the defendants and/or originating the various causes for action against them.

5. Law Num. 97 enacted on June 10, 1972("Law 97") The Department of Housing; its legislative record and Regulation Num. 6243 enacted December 12, 2000 for said agency.
6. The Constitution of the United States (Bill of Rights)
   (a) Amendment V: (Partial quotation):
   "*...No person... (shall).. be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation.*
   (b) Amendment XIV: (Partial quotation):
   "*...No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of... property without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.*"
7. United States Code(42 US 1983)
   "*Every person who, under the color of any statute, ordinance, regulation, custom or usage or any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and Laws, shall be liable to the party injured in an action in law, suit in equity or other proper proceeding for redress, except that in an action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purpose of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a stature of the District of Columbia.*"

8. Commonwealth of Puerto Rico Constitution
   (a) Article II, Bill of Rights:
   Section 7: (Selected partial quotation)
   "*The fundamental human right to life, liberty and the enjoyment of property is recognized. ...No person may be deprived of his/her property without the due process of law.*

nor shall any person in Puerto Rico be denied the equal protection of the laws...."

(b) Section 9: (Selected partial quotation emphasis added)
*"Private property may not be taken or prejudiced for public use without the payment of a just compensation **and in accordance with the manner provided by law**" ... (emphasis added)*

(c) Article VI, Section 9:
"Public property and funds may only be disposed of for public purposes and for the support and functioning of State institutions and in all cases by the authority of law"

9. Law Num. 12 enacted on August 8, 1974, [32 L.P.R.A. S 3524 (3)]

(Partial quotation):

"..Providing, however, that the court may order it so as a temporary injunction, preliminary or permanent injunction subject to the terms of Regulation 57 of the Civil Code:

(1) In those cases where it is indispensable for its jurisdiction to be effective and prior to a determination that the order is indispensable for avoiding irreparable damage to the petitioner;

(2) When in the petition it is alleged that some person under the authority of some law, ordinance or regulation of the Commonwealth of Puerto Rico is depriving or is the cause of the petitioner being deprived of some right, privilege or immunity protected by the Constitution of the Commonwealth of Puerto Rico or by the Constitution of the United States as applicable to the people under the jurisdiction of the Commonwealth of Puerto Rico." Providing also that through said order the court must consider the public interest involved and conclude that petitioner has a real possibility of prevailing on the merits of his/her petition. Said order will only have effect in the specific case before the court and between the parties." ...

10. Civil Code of Puerto Rico: Articles 4:1046; 1066; 1067; 1077; 1301; 1307; 1802; 1803.

FIRST: FACTS COMMON TO ALL CLAIMS

(1) The property, object of this action is the "Original Property" related in Paragraph **B3** in the "**INTRODUCTION**" of this complaint.

(2) Said "Original Property" has been the object of multiple transactions, contracts and other acts among diverse parties that are related in **"ATTACHMENT B"** of this complaint which consists of a table indicating the projects and correlates them with the registry data on the affected parcels; the project names; the title transfer transactions; the parties involved (including the agencies that sold them); the relevant dates, the value or price of each transaction and identifies the private developers, defendants as well as the names of the respective projects.

(3) Regarding the portions (parcels) of the Original Property that have been developed over the years since 1963, the date when expropriation proceedings were initiated and that are described in a graphic illustration of its registry history in "**ATTACHMENT A**" of this complaint. The information described in said attachment is a summary of the facts that appear annotated or inscribed in the corresponding Property Registry.

(4) Regarding the correlation, said portions (parcels), in a plan prepared and superimposed over the Original Property surveyor's plan, being identified and placing said parcels approximately in relation to said lot in "**ATTACHMENT D**" of this complaint.

(5) Regarding the physical aspect of the general geographic area on August 20, 2001 regarding the approximate boundaries of the Original Property in accordance with the measurements, we refer to "**ATTACHMENT D**" (plan) and **"E"** (aerial photograph) of this complaint.

(6) All of the facts were incorporated in Paragraphs "A" and "B" in the initial section of this complaint titled "**INTRODUCTION**."

(7) Regarding all of the defendants included in the groups "A" through "H" of this complaint, it is affirmed and alleged that if the exercise of power to expropriate, observed in this case was to avoid inflationary speculation as a public end in and of itself.

from the moment that the agency deposited the inventory of expropriated lands or the successor agencies or cessionaries decide to reincorporate them into the economic flow of the country through its sale to private hands for a price close or equal to its market value, the reason for being publicly useful ceases. At that very moment, the latent right of the plaintiff is reactivated for its preferential recuperation; because the initial justification is defeated, being an expropriation to avoid inflationary speculation. In other words, nothing was achieved nor was there any benefit for the general community nor any particular sector,

if after all, when disposing of the lands, the government placed them at prevalent market prices when disposing of them or selling them or divest itself of them the way it did. Neither is the sale or divestiture of expropriated lands justified to a private company at prices lower than those on the market if in return the government does not demand an anti-inflationary benefit reflected in the general community or to benefit some underprivileged sector. These illegal divestitures only resulted in filling the pockets (unjustly enriching) of the private businesses that purchased and developed the lands that are the object of this litigation. Said businesses were free to dispose of the lands without restrictions, except as would any other citizen in complying with the Master Plan for the area or any other reasonable limitation duly imposed by the Planning Board. On the other hand, there was no compliance with a public end if the effect of the acts of the State in the expropriation is to enrich the coffers without consequences as a product of the abuse of power and the violation of civil rights, immunities and privileges to which the plaintiff is entitled. In our free enterprise system, the government may not compete with private enterprises in the economic flow enriching itself through sale of lands that it forcibly expropriated, on which no taxes are paid, to later sell them for a profit. Neither is there any public end served when such power is exercised abusively as it did and attempted to continue to do so through the BGF. Said act has the effect of transmitting to one particular sector the benefits and unjust enrichment which means buying cheap from the government and later selling dear the deprived property to the original owner (his/her successors). What happened in reality (*facts that the* *honorable Supreme Court could not have been anticipated in the case,* ***the Commonwealth of Puerto Rico vs Rosso, 95 D.P.R. 501)*** with the Rosso Property, knowing what happened and the final purpose of the expropriated property finally was the illegal confiscation with the artificial coverage of compliance through compensation for fair value, and the abuse of power ex-post facto. The acts of the government through its agencies and functionaries as they relate to the Rosso Property events described, offend the most elemental principles of a free, democratic and pluralistic society whose economy flows and is sustained by the practice and observation the free enterprise capitalist system. The foundation and stimulus of said system is precisely the right to obtain, possess and enjoy privately all kinds of property in contrast to the social philosophies of fascists or communists.

(8) Regarding the co-defendants under groups "C," "D," and "E" of this complaint, said parties conspired with government agencies and functionaries that allowed, guided, approved, agreed and conceded rights and titles for the diverse segregated Original Property parcels. They conspired in the violation and in effect violated the rights if the plaintiff enriching themselves illegally and unjustly to acquire the properties for less than their market value for their later development with profits and ignoring the legal rights to recover them according to what is expressed in this complaint, ignoring the rights previously acquired for said property.

(9) Regarding the defendants under groups "A," "B," "F, "G," "H" and the El Jardin de Rio Piedras Corporation and their officers and shareholders, said parties and people together with government functionaries deprived the plaintiff of the rights and privileges protected by the Constitution and laws of the Commonwealth of Puerto Rico and the Constitution of the United States of America. This is why and under the provisions of Law Num. 12 enacted August 8, 1974, (32 L.P.R.A.S3524 (2)(2) and Regulation 57 of Civil Proceedings, we at the appropriate time we will request in this complaint that an Injunction be issued against them and specifically against the BGF to impede the disposition of, divestiture, encumbering or by any other means carry out any act to control any of the undeveloped parcels that comprise or have comprised the

Original Property until it has been determined what the procedures of the present case are to be or another case provided by the court itself before the corresponding transactions.

(10) On the expropriation date, the person presenting the complaint, Mr. Jorge Rosso, was an active, experienced and successful developer in the housing construction industry fully able to carryout the residential projects built later on the expropriated land.

(11) The remainder of the Original Property, still not developed and whose title is detained by the BGF, is described in the Complaint Notification Preventive Notification Order issued in this case and is on file.

(12) All of the actions, contracts, transactions and documents granted by the defendants related to the conveyance of title of any portion of the Rosso Property to BGF or to any other private natural or juridical person are null, illegal, invalid in their object and substance, non-existent or without juridical effect including the actions and transactions carried out subsequently regarding said property. No authorizing notary or member of any law firm for whom said notary worked when said transactions were authorized, can or should appear as a lawyer for ant party to defend the validity of the transactions being challenged in these circumstances and much less when the effect of such granting was to illegally affect the plaintiff's previously acquired rights. At the appropriate time, we will petition the court about this issue unless motu propio provides direction on the matter in accordance with law and its correct interpretation of applicable jurisprudence with respect to the canon of ethics of the legal profession today.

(13) The defendants, who are or were functionaries, agents or employees of the State on the dates when each and every one of the transactions were processed for the titles of the segregated portions of the Rosso Property, the object of this complaint, acted in their official capacities and within the framework of their functions when they intervened in fault and negligence which caused the alleged damages to the plaintiff. All of them failed to comply with their duties as imposed by law and cited constitutional precepts.

(14) Each of the transactions (Paragraph **FOUR**: History of the Specific Facts) done illegally over the years and that affected the alleged rights of the plaintiff, is a separate fact in itself; each one generates an independent cause for action and caused damages to the plaintiff.

SECOND: RESERVATION OF RIGHTS

Regarding all of the parties in all of the groups in this complaint, we expressly reserve the right to seek out and request remedies and press for claims at any time and of any kind before the courts of the United States of America with jurisdiction over people and material and particularly under the provisions of **42 United States Code S 1983**. Furthermore, we reserve the right to amend this complaint to include additional causes for action, apply for different remedies or demand that they be referred for criminal investigation of those matters related to the actions and transactions described in this complaint or that may arise during the discovery of rigorous proof of the additional investigations that are being conducted. This reservation includes, but is not limited to violations of the federal law and statutes under the provisions that my apply to the agencies known as the Federal Housing and Urban Development Administration (H.U.D.) And The Farmers Home Administration (FHA). We also reserve the right to impugn the legal representation of any of the parties that may appear when that individual may have offended or violated the canon of professional ethics. We reserve the right to include as an additional part and make personally responsible to apply for remedies from any public functionary who knowingly or could have reasonably anticipated in the performance of his/her duties allow legal representation of his/her agency or public instrumentality in spite of any apparent conflict that said representation may have had with the provisions of said canons at the cost of spending public funds for the payment of fees or expenses of this litigation. Included in this reservation is the impugnation of a conflict of interests if any professional subject to the eanon of ethics are prohibited by them. And finally, we reserve the right ti impugn within these proceedings or in any other forum with jurisdiction (i) the authority and capacity of the Commonwealth of Puerto Rico to exercise the power of eminent domain as an attribute of the full sovereignty of a state required for having such domain over property within its jurisdiction; (ii) if such a right exists through the expressed delegation by the Congress of the United States of America through legislation, it is subject its legislative authority and can only be exercised within the framework of the law according to federal jurisprudence or if there is just the slightest ancillary attribute of valid Commonwealth of Puerto Rico powers.

THIRD: IDENTIFICATION OF THE PARTIES

A. Government Agencies and Instrumentalities.

(1) **Regulations and Permits Administration** is a public instrumentality created by Law Num. 76 on June 24, 1975 (23 L.P.R.A.., S71 et sec.) Hereinafter to be referred to as "**ARPE**"

(2) **The Lands Administration** was created by Law Num. 13 on May 16, 1962 ((23 L.P.R.A.., S311 et sec.). It is empowered to be sued and file lawsuits. Hereinafter it will be to referred as "**AT**."

(3) **Puerto Rico Government Development Bank** was created by Law Num. 17 on September 23, 1948 (7 L.P.R.A.., S552 et sec.). It is the public instrumentality that holds the title to most of the expropriated still undeveloped lands. It is empowered to be sued and file lawsuits. Hereinafter it will be to referred as **"BGF."**

(4) **The Rio Bayamon Community Development Commission** is the name of the group of people organized by virtue of any executive order originally issued by the then incumbent Governor Carlos Romero-Barcelo on September 17, 1981 (Administrative Newsletter #3923 –B), whose order was later amended by Governors Rafael Hernandez-Colon on April 29, 1988 (Administrative Newsletter #5093 –D) and Pedro Rosello on December 6, 1994 (Administrative Newsletter #OE-1994 –67).

(a) Said group is not a juridical person per se, nor is there any special law ratifying, authorizing or supporting its authority or juridical capacity, nor its delegated ultra-vires powers by the Executive.

(b) Its creation and the delegation of known powers are null due the violation of the principle of the separation of powers and exceeds the authority of Executive Power.

(c) Its actions in common and the individuals who are its members are illegal and ultra-vires to the extent that they violated and attempted to continue to violate and affect the rights of the plaintiff and causing the damages alleged in this complaint.

(d) To the best of our knowledge and understanding, its members are the Secretaries of the Department of Housing and the Department of Transportation and Public Works; the President of the Planning Board; the Executive Director of the Lands Administration, and the Mayors of Bayamon and Guaynabo. Other governmental entities also participate such as the Regulations and Permits Administration and the Electrical Energy Authority. Hereinafter it will be to referred as "**CDC.**'

(5) The Department of Transportation and Public Works (3 L.P.R.A.., S411 et sec.) is a Commonwealth of Puerto Rico executive department or governmental agency. Hereinafter it will be to referred as "**DTOP**."

(6) The Housing Department is a Commonwealth of Puerto Rico executive department or governmental agency.
It was created by Law #97 on June 10, 1972 (28 L.P.R.A.., S521 et sec.). The aforementioned law transferred to the Department the functions of the Urban Renewal and Housing Administration replacing it and added the Corporation of the Urban Renewal and Housing and the Housing Bank, transferring to the Secretary the functions of the Boards of Directors of said organisms. Hereinafter it will be to referred as **"HOUSING" or "DV."**

(7) Commonwealth of Puerto Rico is a the principal governmental organism of the people of Puerto Rico created through the authorization of the Congress of the United States of America through legislation.

(8) The Planning Board (a) (28 L.P.R.A.., S 62k et sec.) is public instrumentality attached to the Governor's Office (a). Hereinafter it will be to referred as **"The BOARD."**

(9) The Municipalities of Guaynabo and Bayamon are political organizations created by law with territorial extensions defined and local government. Hereinafter they will be to referred as "**BAYAMON**" and **"GUAYNABO"** respectively.

(10) (GROUP I) **Lawyers, law firms and public notaries** herein given fictitious names who granted transactions and authorized (testimonies) signed on the documents involved in the violation of the canon of professional ethics or in some other way acted against the law with respect to transactions that affected the rights of the plaintiff regarding the Rosso Property and caused the alleged damages.

(11) (GROUP G) **Hon. Luis Rivera-Rivera; Mr. Carlos I. Pesquera; Marcos Rodriguez-Emma and Lourdes M. Rovira** are the people whose names are known that are being personally sued for a having negligently and culpably, and causing damages to the plaintiff.

B. On August 13, 2002, the following parties were corroboratively notified in writing of this claim: COMMONWEALTH OF PUERTO RICO; THE RIO BAYAMON COMMUNITY DEVELOPMENT COMMISSION; THE PUERTO RICO PLANNING BOARD; THE PUERTO RICO LANDS ADMINISTRATION; THE COMMONWEALTH OF PUERTO RICO HOUSING DEPARTMENT; THE PUERTO RICO GOVERNMENT DEVELOPMENT BANK; THE MUNICIPALITY OF BAYAMON; THE MUNICIPALITY OF GUAYNABO.

C. Corporations and Special Partnerships

(1) The defendants included in the Groups "C" and "E" are the entities, corporations, special partnerships, consortia, juridical entities or natural people that acquired, developed or otherwise exercised rights of possession or domain over any part of the Rosso Property described in the complaint and after the expropriation. Their respective names and other data appearing in "**B**" of this complaint, except for Valles de Guayabo, S.E., El Jardin de Rio Piedras, Inc. and the Puerto Rico Government Development Bank. Hereinafter said parties will be referred together and individually as **"Developers"** or "**Developer"** respectively except when we specifically refer to any of them individually in some other way or by their specific names.

(2) El Jardin de Rio Piedras, Inc. is a domestic profit making corporation doing businessman in Puerto Rico. Hereinafter it will be to referred as "**El Jardin**."

(3) **Valles de Guayabo, S.E.** is a special partnership organized under the laws of Puerto Rico which among other acts violated the plaintiff's rights described in this complaint causing the alleged damages; this special partnership build by itself or through front men a private housing project. Its principals seem to be the same people that are involved and related to El Jardin de Rio Piedras, Inc., a corporation that is now trying to possess the largest slice of the remaining expropriated lot that is subject to the possession and illegal title of BGF. Hereinafter it will be to referred as "**Valles de Guayabo.**"

D. Public Functionaries and Natural Individuals or People

(1) **Carmen Rosso-Descartes**, the plaintiff is of legal age, married, housewife, resident of Guayabo, United States of America citizen and heir of her parents, Jorge Rosso and Carmen Descartes for whom the Rosso Property was expropriated. Hereinafter she will be to referred as **"ROSSO."**

(2) **Commissioners John Doe** (Group B) are the functionaries, individuals or people that actually comprise the Rio Bayamon Community Development Commission as its members. Hereinafter they will be to referred as the **"John Doe Commissioners"** except when we specifically refer to any of them individually in some other way.

(4) **Commissioners Jack Doe** (Group B) are the functionaries, individuals or people that formed part of the so called Rio Bayamon Community Development Commission as its members since its original creation by executive order on September 17, 1981 and were latter replace by their successors, the current incumbents. Hereinafter they will be to referred as the **"Jack Doe Commissioners"** except when we specifically refer to any of them individually in some other way.

(5) **Functionaries X,Y,Z,** (Group B) are Commonwealth of Puerto Rico public functionaries not included in an aforementioned group or denomination that participated in illegal, negligent and culpable acts described in the complaint. Hereinafter they will be to referred as "**Functionaries X,Y,Z"** except when we specifically refer to any of them individually in some other way.

FOURTH: A RECOUNTING OF THE SPECIFIC FACTS

1. On **December 3 and 5, 1963**, through a resolution presented by P. Santos-Borges, Puerto Rico Supreme Court Justice, Expropriations Court, for Cases #E63-1652 through E63-1656, the Property Title of the aforementioned properties were invested in the Commonwealth of Puerto Rico (E.L.A.):
    - 191 (127.5824 *cuerdas*; Title Search Num. 02-40)
    - 6080 (73.2305 *cuerdas*; Title Search Num. 02-41)

      Both inscribed in the Bayamon Property Registry.
    - 9024 (4.9665 *cuerdas*; Title Search Num. 02-17)
    - 8841 (7.9825 *cuerdas*; Title Search Num. 02-01)
    - 1441 (26.7040 *cuerdas*; Title Search Num. 02-16) and
    - 1420 (4.6297 *cuerdas*; Title Search Num. 02-62) in Guayabo.

   In total, the Commonwealth of Puerto Rico expropriated 321.13 *cuerdas* from the Rosso Property.
2. In the resolution issued on **February 24, 1975** by Justice Dan F. Rodriguez of the Puerto Rico Supreme Court Justice, Expropriations Court, for Cases #E63-1652, 1655 and 1656, it was provided that said expropriated property was to be inscribed in the of the Lands Administration(AT).
3. On **September 3, 1980**, the Lands Administration group the following lots together: Number 9024 (4.9665 *cuerdas*); lot number 8841 (7.9825 *cuerdas*), these belonging to the Original Property, and Lot Number 1442 (25.002 *cuerdas* which does not belong to Mr. Rosso's expropriated property) to comprise the Lot Number 27,821 (64.6630 *cuerdas*) in Guayabo).
4. Subsequently, the Lots Numbers 27821 (64.6630 *cuerdas*); 1441??? (26.7040 *cuerdas*) and Lot Number 1420 ((4.6297 *cuerdas*) to comprise Lot 28215 (100.7583 *cuerdas* in Guayabo which was sold to CRUV in **January 14, 1982** for the price of $4,090,737.00.

5. On **October 25, 1969**, the Lands Administration purchased the Lot 7737 (5.0823 *cuerdas*) in Bayamon from Ana Maria Davila. It together with a segregation made, Lot 6157 (63.7645 *cuerdas*; Num.02-39) in Bayamon, on **January 14, 1982**, with lot 59451 (53.8291 *cuerdas*; and other segregations made on the expropriated lots of Mr. Rosso, they were grouped to form lot 59454 (193.9918 *cuerdas*) in Bayamon to later be sold to the CRUV for the price of $4,090,737.00 **on the same date**.
6. The remainder of the expropriated lots in Bayamon were grouped together with four lots in Guayabo to form Lot 63175 (100.7583 *cuerdas*); (Num. 31644 in the Guayabo Property Registry) that was sold to the CRUV for the price of $7,166,944.35 on **July 3, 1985**. On **October 3, 1985**, Lot Number 31938 (1.0694 *cuerdas*) was segregated, among other lots that were not part of the Original Property.
7. *The CRUV Accounts Liquidation Office segregated Lot 70873 (11.1236 *cuerdas*) and sold it to the Municipality of Bayamon for the price of $260,000.00.
8. * **On February 10, 1994**, Lot 28215 (100.7583 *cuerdas*; the following lots: 29999 (related to previous paragraph) Lot 37491, which today is Plazas de Torrimar II(3.5482 *cuerdas*), Lot 37152, which today is Urbanization Altos Torrimar (4.249 *cuerdas*) and Lot 37883 (4.6297 *cuerdas*). Lot 37491 today is Plazas de Torrimar I, was sold to Shabas Corporation of the price of $306,720.00 and Lot 37492 which today is Plazas de Torrimar II, to Shabas S.E. for the price of $280,000.00 Shabas Corp. was represented by its president, Dilip JagmobandasShab and Shabas, S.E. by its Negotiating Partner, DJS Corporation.
9. ***On June 27, 1990**, the CRUV segregated and sold Lot 37152 (4.249 *cuerdas*) to Transglobe Manufacturing Corp. represented by Roberto Chevere-Burgos with Transaction Number 29, granted before the notary public Roberto Garrido-Monge for the amount of $665,280. **On the same date**, this corporation sold this lot to Transglobe Limited Partnership, S.E. by its Negotiating Partner, Continental Construction with Transaction 31 for the price of $1,126,605.00 for a profit of $461,325.00!!!!
10. ***On March 27, 1991**, eight months later, Transglobe Limited Partnership, S.E. segregated Lot 37152 (described in the previous paragraph, covering 4.249 *cuerdas* alone, Lot 37182, known today as Condominium Altos Torrimar (1.992 *cuerdas*) to

Boulevard del Rio Corporation, S.E. for the price of $1,321,920.00!!! In other words, this lot increased to almost twice its value in the eight months following the irresponsible or co-conspirator CRUV to sell it originally.

11. ***On June 9, 1997**, Boulevard del Rio Corporation, S.E. proceeded to segregate from Lot 37883 (4.249 *cuerdas*) the follow lots: 37887 (4.327 *cuerdas*), Lot 37886 (4.2548 *cuerdas*) and 37885 for itself which today is Boulevard del Rio (7.435 *cuerdas*).
12. ***On September 20, 1999**, Boulevard del Rio Corporation, S.E. segregated Lot 37887, Lot 37889 (0.1983 *cuerdas*); that together with the rest of Lot 37883 (4.6297 *cuerdas*) was grouped to comprise Lot 37271, which today is Boulevard del Rio II (4.5281 *cuerdas*).
13. ***On January 4, 1982**, the CRUV segregated and sold Lot 59466 (5.0621 *cuerdas*) to Casa Linda del Sur Associates, S.E. for the price of $636,800.00. Casa Linda del Sur Associates, S.E. was represented by it General Partner, Blanco Enterprises, Inc. which in turn was represented by its president, Carlos A. Nadarse.
14. *Of the remainder of said lot, on October 29, 1985, the CRUV segregated Lots 62757 (4.6372 *cuerdas*) and 62758 (4.8524 *cuerdas*) for itself which were grouped to comprise Lot 62759 which today is Villas de Rio and Veredas del Rio (9.4892 *cuerdas*) which was sold to Empire Housing Corp. for the price of $501,120.00 on the same day!!!
15. *By Transaction Numbers 182 and 1034 titled "Deed of Subdivisions, Release, Consolidation, Sale, Purchase, Money Mortgage and Subordination," granted on **February 25, 1988 and November 28, 1989** respectively before notary public Carlos M. Garcia-Rullan, the CRUV segregated Lots 65408 (100.7583 *cuerdas*), Lot 65409 (6.4653 *cuerdas*) and 65410 (5.623 *cuerdas*) for itself. These three lots were grouped to comprise **Lot 65411** which today is known as Riberas del Rio (17.893 *cuerdas*) to be sold to Pieri Construction, Inc. for the price of $1,045,440.00 **February 25, 1988**. On the same day!!!, Pieri Construction Corp sold the remaining (13.67 *cuerdas*) of **Lot 65411** which today is known as Riberas del Rio, a Pieri Construction Limited Partnership, S.E. for the price of $244,000.00, simulating a loss) which later, two lots were segregated that are described as follows:

a. **On November 18, 1989**, Pieri Construction Limited Partnership, S.E. segregates Lot 65941for itself which today is Riberas del Rio Garden Apartments (2.0928 *cuerdas*) and,
b. Lot Number 70825, today known as Sunset View (2.1365 *cuerdas*). Later, said lot was ceded by Pieri Construction Limited Partnership, S.E. for the sum of $1.00 to the Commonwealth of Puerto Rico (E.L.A.) represented by the Department of Transportation and Public Works in Transaction Number 104 dated **September 6, 1991**, in Transaction 83 granted before notary public Carlos M. Garcia-Rullan, the E.L.A., represented by the Department of Transportation and Public Works which in turn was represented by Carlos I. Pesquera, ceded and transferred this lot for the sum of $149,026.30 to Pieri Construction Limited Partnership, S.E., represented in turn by Desarrollos ANNA, Inc., represented in turn by Juan M. Clark-Muniz. Later, on **February 26, 1996**, in Transaction 3, granted before notary public Carlos M. Garcia-Pesquera, Pieri Construction Limited Partnership, S.E. sold that same lot to J.M.F. Development, S.E. for the price of $500,000.00.

16. **On December 28, 1984**, the CRUV segregated Lots 61328 (5.8499 *cuerdas*) and Lot 31327 (5.2327 *cuerdas*) for itself.
17. *These two lots were at the same time grouped into **Lot 61328** which today is Alturas de Rio Bayamon, (11.0826 *cuerdas*). The CRUV segregated and sold said lot (**61328**) to Mora Development Corporation for the price of $563,900.00, in other words less than its value. Mora Development Corporation was represented by its president, Cleofe Rubi Gonzalez.
18. *On **July 11, 1986**, Lot 61328 was segregated which today is Alturas del Rio Bayamon to Mora Development Corporation represented by Cleofe Rubi Gonzalez, to be dedicated for public use at $500.00 Lot 62305 (11,0594 sq. mts. or 2.89 *cuerdas*).
19. * Also segregated from Lot 59454 were the following parcels whose registration in the Bayamon Property Registry is pending:
    - i Parcel P-1 covering 4.442 *cuerdas*
    - ii Parcel S-2 covering 1.8488 *cuerdas*

    On **December 22,** 2000, these two parcels were granted in Transaction 44 before notary public Awilda Maria Broco-Rodriguez. They were ceded free of charge by the Municipality of Bayamon Housing Department.

iii Parcel C covering 4.2256 *cuerdas,*

iv Parcel S-1 covering 2.866 *cuerdas*

v. Parcel O-5 covering 46.648 *cuerdas*

20. ***On December 22, 1995**, the CRUV Accounts Liquidation Office segregated lots 72805 (4.75 *cuerdas*) and 72805A (4.092 *cuerdas*) for itself. On the same day, they were grouped together into Lot 72806 (8.806 *cuerdas*) and sold to Third Development, Inc. for the price of $622,080.00 ($70,347 per *cuerda*). In other words, once again for more than its value. Later (twenty months later) on **August 25, 1997**, Third Development, Inc. segregated from said lot a parcel of 1.461 *cuerdas* which today is known as Urbanization Villa de la Fuente. On **April 26, 2000**, said parcel was sold to Fourth Development, Inc. for the price of **$305,728.00**, in other words (**at $209,259 per *cuerda* which was acquired from the CRUV at $70,0347.16)**. Third Development, Inc. was represented by Jorge Isaac Facundo-Alvarez.

21*On **December 30, 1997**, the Urban and Housing Renovation Corporation Accounts Liquidation Office through their board of directors (now convicted) and the B.G.F., undersigned the Public Transaction 12 for Ceding the Property through

ANNEX D

COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
COURT OF APPEALS

BAYAMÓN JUDICIAL REGION

CASE NO. KLCE200401540

RE: CIVIL INTERLOCUTORY CERTIORARI

ROSSO DESCARTES, CARMEN T *
*
V. *
*
GOVERNMENT DEVELOPMENT BANK FOR P.R. *

* *

MS. CARMEN V. IRIZARRY ROSSO
PO BOX 8486
FERNANDEZ JUNCOS STATION
SAN JUAN PR 00910-1600

NOTICE OF JUDGMENT

THE UNDERSIGNING CLERK NOTIFIES YOU THAT THIS COURT HAS ENTERED JUDGMENT IN THE ABOVE CAPTIONED CASE DATED MARCH 31 2005 , THAT IT HAS BEEN DULY RECORDED AND FILED IN THE DOCKET OF THIS CASE, WHERE YOU MAY LEARN IN DETAIL FO THE TERMS THEREOF

AND YOU BEING OR REPRESENTING THE PARTY INJURED BY THE JUDGMENT, WHEREOF A RECOURSE OF APPEAL MY BE FILED, I ADDRESS THIS NOTICE TO YOU, HAVING FILED IN THE DOCKET OF THIS CASE COPY THEREOF DATED APRIL 13, 2005 .

MR CARLOS RUIZ COX -
PO BOX 9021547 SAN JUAN PR 00902-1547
BAYAMON GENERAL CLERK (SUP) -
BOX 600619 BAYAMON PR 00960-0619

MR. ARTURO NEGRON GARCIA — URB EL VEDADO
123 RODRIGO DE TRIANA SAN JUAN PR 00918

MR. ARTURO NEGRON VARGAS — URB EL VEDADO
123 RODRIGO DE TRIANA SAN JUAN PR 00918
MR. ALBERTO OMAR JIMENEZ SANTIAGO —
PO BOX 191802 SAN JUAN PR 00919-1802
MR. MANUEL D HERRERO GARCIA — BANCO COOP PLAZA APT 205 B
623 PONCE DE LEON AVE SAN JUAN PR 00917

MR. VICENTE ZAYAS PLAZA —TROPICANA COND.
5094 TARTAK STREET STE C-103 CAROLINA PR 00919
MR. JORGE I PEIRATS CENDOYA — BANCO POPULAR CENTER
209 MUNOZ RIVERA STE 1901 SAN JUAN PR 00908
MR FERNANDO J COLLAZO VALLE — BANCO POPULAR CENTER FLOOR 19
209 MUNOZ RIVERA AVENUE SAN JUAN PR 00918
MR. CARLOS E. CARDONA FERNANDEZ
PO BOX 9024005 SAN JUAN PR 00902-4055
MR. EDUARDO VERA RAMIREZ - CENTRO INTERNACIONAL DE MERCADEO
100 ROAD 165 TOWER 1 OFFICE 203 GUAYNABO PR 00968

CONT. CASE [Illegible]

SAN JUAN, PUERTO RICO ON APRIL 13, 2005

s/LAURA M. VELEZ VELEZ

CLERK

[Initials]
BY: BARBARA IVETTE MOJICA CALDERON

DEP. CT. CLERK I

OCA 704-1- NOTICE OF JUDGMENT-CA

No.: 2006-374 CERTIFICATE OF TRANSLATOR

I, Mayra Cardona Durán, of legal age, single, resident of Guaynabo, Puerto Rico, Certified Interpreter of the United States District Court and certified member of the National Association of Judiciary Interpreters and Translators, and admitted to the Puerto Rico Bar Association, hereby CERTIFY: that according to the best of my knowledge and abilities, the foregoing is a true and faithful rendering into English of the original Spanish text which I have translated and it is stamped and sealed as described herein. This document is comprised of Four (4) pages, including this certification page, and does not contain changes or erasures.

In Guaynabo, Puerto Rico, today, Thursday, April 27, 2006.

Lcda. Mayra Cardona
United States Courts Certified Interpreter
NAJIT Certified Interpreter & Translator
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COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
COURT OF APPEALS
BAYAMÓN JUDICIAL REGION

CASE NO. KLCE200500182

RE: CIVIL INTERLOCUTORY CERTIORARI

ROSSO DESCARTES, CARMEN T *
*
V. *
*
GOVERNMENT DEVELOPMENT BANK FOR P.R. *

* *

MS. CARMEN V. IRIZARRY ROSSO
PO BOX 8486
FERNANDEZ JUNCOS STATION
SAN JUAN PR 00910-1600

NOTICE OF JUDGMENT

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AND YOU BEING OR REPRESENTING THE PARTY INJURED BY THE JUDGMENT, WHEREOF A RECOURSE OF APPEAL MY BE FILED, I ADDRESS THIS NOTICE TO YOU, HAVING FILED IN THE DOCKET OF THIS CASE COPY THEREOF DATED APRIL 13, 2005 .

MR. ARTURO NEGRON GARCIA — URB EL VEDADO
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CONT. CASE NO. KLCE200500182
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MR. EDGARDO VEGUILLA GONZALEZ –
HC 01 BOX 6015 AGUAS BUENAS PR 00703-9701
MR. FACUNDO M DI MADRO VAZQUEZ – SAN GERARDO
ANÁPOLIS 1648 SAN JUAN PR 00926

SAN JUAN, PUERTO RICO ON APRIL 13, 2005

s/LAURA M. VELEZ VELEZ

CLERK

[Initials]
BY: BARBARA IVETTE MOJICA CALDERON

DEP. CT. CLERK I

No.: 2006-371 CERTIFICATE OF TRANSLATOR

I, Mayra Cardona Durán, of legal age, single, resident of Guaynabo, Puerto Rico, Certified Interpreter of the United States District Court and certified member of the National Association of Judiciary Interpreters and Translators, and admitted to the Puerto Rico Bar Association, hereby CERTIFY: that according to the best of my knowledge and abilities, the foregoing is a true and faithful rendering into English of the original Spanish text which I have translated and it is stamped and sealed as described herein. This document is comprised of Four (4) pages, including this certification page, and does not contain changes or erasures.

In Guaynabo, Puerto Rico, today, Thursday, April 27, 2006.

Lcda. Mayra Cardona
United States Courts Certified Interpreter
NAJIT Certified Interpreter & Translator
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COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
COURT OF APPEALS
BAYAMÓN JUDICIAL REGION

CASE NO. KLCE200500186
*
RE: CIVIL INTERLOCUTORY CERTIORARI

ROSSO DESCARTES, CARMEN T *
*
V. *
*
GOVERNMENT DEVELOPMENT BANK FOR P.R. *
* *

MS. CARMEN V. IRIZARRY ROSSO
PO BOX 8486
FERNANDEZ JUNCOS STATION
SAN JUAN PR 00910-1600

NOTICE OF JUDGMENT

THE UNDERSIGNING CLERK NOTIFIES YOU THAT THIS COURT HAS ENTERED JUDGMENT IN THE ABOVE CAPTIONED CASE DATED MARCH 31 2005 , THAT IT HAS BEEN DULY RECORDED AND FILED IN THE DOCKET OF THIS CASE, WHERE YOU MAY LEARN IN DETAIL FO THE TERMS THEREOF

AND YOU BEING OR REPRESENTING THE PARTY INJURED BY THE JUDGMENT, WHEREOF A RECOURSE OF APPEAL MY BE FILED, I ADDRESS THIS NOTICE TO YOU, HAVING FILED IN THE DOCKET OF THIS CASE COPY THEREOF DATED APRIL 13, 2005 .

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SAN JUAN, PUERTO RICO ON APRIL 13, 2005

s/LAURA M. VELEZ VELEZ

CLERK

[Initials]
BY: BARBARA IVETTE MOJICA CALDERON

DEP. CT. CLERK I

No.: 2006-372 CERTIFICATE OF TRANSLATOR

I, Mayra Cardona Durán, of legal age, single, resident of Guaynabo, Puerto Rico, Certified Interpreter of the United States District Court and certified member of the National Association of Judiciary Interpreters and Translators, and admitted to the Puerto Rico Bar Association, hereby CERTIFY: that according to the best of my knowledge and abilities, the foregoing is a true and faithful rendering into English of the original Spanish text which I have translated and it is stamped and sealed as described herein. This document is comprised of Four (4) pages, including this certification page, and does not contain changes or erasures.

In Guaynabo, Puerto Rico, today, Thursday, April 27, 2006.

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COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
COURT OF APPEALS
BAYAMÓN JUDICIAL REGION

CASE NO. KLCE200500187

RE: CIVIL INTERLOCUTORY CERTIORARI

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SAN JUAN, PUERTO RICO ON APRIL 13, 2005

s/LAURA M. VELEZ VELEZ

CLERK

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In Guaynabo, Puerto Rico, today, Thursday, April 27, 2006.

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ANNEX E

IN THE SUPREME COURT OF PUERTO RICO

Carmen Rosso Descartes Petitioner v. Government Development Bank for Puerto Rico and others	No. CC-2005-427

RESOLUTION

[Seal of the Court]	San Juan, Puerto Rico, on January 27, 2006 Having seen the motions filed in the above captioned case in compliance with the order entered in our Resolution on December 15, 2005, the request for reconsideration filed by the petitioner is hereby denied. So agreed by the Court and certified by the Clerk of the Supreme Court. Associate Justice Mr. Rebollo López did not intervene. [Signature] s/Aida Ileana Oquendo Graulau Clerk of the Supreme Court

COMMONWEALTH OF PUERTO RICO 01 OF 02
GENERAL COURT OF JUSTICE
SUPREME COURT

ROSSO DESCARTE, CARMEN T. (ROSSO DE IRIRZARRY, CARM- PETITIONER

VS.

GOVERNMENT DEVELOPMENT BANK FOR PR AND OTHERS - RESPONDENT

CASE: CC-2005-04217 ORIG. CASE: DAC-2000-1263 CIVIL ACTION
CIR. CASE: KLCE2004-1540 --------------------------------------
CIVIL ACTION OR CRIME

IRIZARRY, CARMEN V.
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-------------------------- NOTICE -----------------------------------

I CERTIFY THAT REGARDING THE REQUEST FOR CERTIORARI THE COURT ENTERED THE ATTACHED RESOLUTION :

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02 OF 02
CASE NO. CC-2005-0427

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SAN JUAN, PUERTO RICO ON JANUARY 30, 2006

[Signature]
s/MS. AIDA I. OQUENDO GRAULAU

CLERK OF THE SUPREME COURT

MARIA ELENA SALAS GONZALEZ [Initials]

DEPUTY CLERK

No.: 2006-370 CERTIFICATE OF TRANSLATOR

I, Mayra Cardona Durán, of legal age, single, resident of Guaynabo, Puerto Rico, Certified Interpreter of the United States District Court and certified member of the National Association of Judiciary Interpreters and Translators, and admitted to the Puerto Rico Bar Association, hereby CERTIFY: that according to the best of my knowledge and abilities, the foregoing is a true and faithful rendering into English of the original Spanish text which I have translated and it is stamped and sealed as described herein. This document is comprised of Four (4) pages, including this certification page, and does not contain changes or erasures.

In Guaynabo, Puerto Rico, today, Friday, April 21, 2006.

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ANNEX F

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Commonwealth of Puerto Rico

IN THE SUPREME COURT OF PUERTO RICO

CC-65-0427

CARMEN T. ROSSO DESCARTES A/K/A CARMEN ROSSO DE IRIZARRY	CE No.:
	Proceeding from the Court of Appeals Panel Regional District of Bayamón
Petitioner	
Vs.	KLCE200401540
GOVERNMENT DEVELOPMENT BANK FOR PUERTO RICO; LAND ADMINISTRATION; DEPARTMENT OF TRANSPORTATION AND PUBLIC WORKS; DEPARTMENT OF HOUSING; PLANNING BOARD; REGULATIONS AND PERMITS ADMINISTRATION; AND OTHERS	CONSOLIDATED WITH: KLCE200500182 KLCE200500186 KLCE200500187 Proceeding from the Court of First Instance, Superior Part of Bayamón Civil No. DAC2000-1263 (404) Re:
Respondents	Declaratory Judgment; Recovery of Lands by Preferred Right; Claim for Compensation for Damages; Nullity of Judgment; Nullity of Deeds and Contract

CERTIORARI

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master certiorari index

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Commonwealth of Puerto Rico
IN THE SUPREME COURT OF PUERTO RICO

CC-65-0427

CARMEN T. ROSSO DESCARTES A/K/A CARMEN ROSSO DE IRIZARRY	CE No.: Proceeding from the Court of Appeals Panel Regional District of Bayamón
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PETITION FOR *CERTIORARI*

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Commonwealth of Puerto Rico
IN THE SUPREME COURT OF PUERTO RICO

CARMEN T. ROSSO
DESCARTES A/K/A
CARMEN
ROSSO DE IRIZARRY

Petitioner

Vs.

GOVERNMENT
DEVELOPMENT BANK
FOR PUERTO RICO;
LAND
ADMINISTRATION;
DEPARTMENT OF
TRANSPORTATION
AND PUBLIC WORKS;
DEPARTMENT OF
HOUSING; PLANNING
BOARD; REGULATIONS
AND
PERMITS
ADMINISTRATION;
AND OTHERS

Respondents

CE No.:

Proceeding from the
Court of Appeals
Panel Regional District
of Bayamón

KLCE200401540

CONSOLIDATED
WITH:

KLCE200500182
KLCE200500186
KLCE200500187

Proceeding from the
Court of First Instance,
Superior Part of
Bayamón
Civil No. DAC2000-
1263 (404)

Re:
Declaratory Judgment;
Recovery of Lands by
Preferred Right; Claim
for Compensation for
Damages; Nullity of
Judgment; Nullity of
Deeds and Contract

PETITION FOR *CERTIORARI*

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Commonwealth of Puerto Rico
IN THE SUPREME COURT OF PUERTO RICO

CARMEN T. ROSSO DESCARTES A/K/A CARMEN ROSSO DE IRIZARRY Petitioner	CE No.: Proceeding from the Court of Appeals Panel Regional District of Bayamón
Vs.	
GOVERNMENT DEVELOPMENT BANK FOR PUERTO RICO; LANDS ADMINISTRATION; DEPARTMENT OF TRANSPORTATION AND PUBLIC WORKS; DEPARTMENT OF HOUSING; PLANNING BOARD; REGULATIONS AND PERMITS ADMINISTRATION; AND OTHERS Respondents	KLCE200401540 CONSOLIDATED WITH: KLCE200500182 KLCE200500186 KLCE200500187 Proceeding from the Court of First Instance, Superior Part of Bayamón Civil No. DAC2000-1263 (404) Re: Declaratory Judgment; Recovery of Lands by Preferred Right; Claim for Compensation for Damages; Nullity of Judgment;

master certiorari index

Nullity of Deeds
and Contract

PETITION FOR *CERTIORARI*

TO THE SUPREME COURT OF PUERTO RICO:

COMES NOW, Carmen Rosso Descartes, Plaintiff-Petitioner, represented by her undersigned attorneys and very respectfully ALLEGES, STATES AND REQUESTS:

I. Jurisdiction of the Court

1. The jurisdiction of the Supreme Court (hereinafter "SC") to entertain this case arises from the provisions in Article 3.002(d) of the Judicial Act of 2003, Act No. 201 of August 22, 2003, 4 L.P.R.A. §24s(d), Rules 52 and 53 of Civil Procedure, 32 L.P.R.A. Ap. III, R. 52 and 53, and Rule 20 of the Regulations of the Supreme Court of May 1, 1996, 4 L.P.R.A. Ap. XXI-A, R. 20.[1]

II. Brief Discussion Based on the Jurisdictional Basis

2. Pursuant to Rule 20 and the legislation mentioned above, the petition for certiorari filed herein is proper and the Supreme Court has jurisdiction to issue the award since it deals with a petition to review a judgment from the Court of Appeals (hereinafter "CA") entered in a writ for *certiorari* pertaining to a judgment in a civil proceeding of voluntary jurisdiction.

III. Judgment which review is Requested

3. The judgment which review is requested comes from the Court of Appeals, Case Number KLCE200401540[2] consolidated with KLCE200500182[3], KLCE200500186[4], KLCE200500187[5], Judicial Region of Bayamón,

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[1] Hereinafter, every rules citation, except for those expressly identified, refer to those of the Supreme Court Regulations.

[2] See Volume IV of the Appendix, 2497-2519.
[3] See Volume I of the Appendix, 1-36.
[4] See Volume II of the Appendix, 1106-1136.
[5] See Volume III of the Appendix, 2079-2109.

Panel VI. Said judgment was entered on March 31, 2005, having filed a copy in the docket of its notice on April 13, 2005.[6]

IV. Order and resolutions from the Court of First Instance that were reviewed by the Court of Appeals

4. The appealed order in Case Number KLCE200401540 of the Court of Appeals was entered in Case DAC2000-1263 Carmen T. Rosso Descartes vs. Government Development Bank for Puerto Rico, on September 3, 2004 and notified September 27, 2004 by the Court of First Instance (hereinafter "CFI"), Superior Part of Bayamón, entered by Honorable Judge Hector Clemente Delgado.[7] On October 13, 2004, the Appellant filed a Motion for Reconsideration.[8] On October 29, 2004, the Court entered the order notified November 1, 2004, DISMISSING the requested reconsideration pursuant to the oral argument rendered at the hearing of October 19, 2004.[9]
5. The appealed Resolutions in Cases Number KLCE200500182, KLCE200500186, and KLCE200500187 of the Court of Appeals, consolidated with KLCE200401540, were entered by the Court of First Instance, Bayamón Part, on January 18, 2005, in Case DAC2000-1263, Carmen T. Rosso Descartes vs. Government Development Bank for Puerto Rico,[10] having filed in the docket

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[6] See Volume V of the Appendix, 2618-2684.

[7] See Volume IV of the Appendix, 2605-2608; see also number 38 of the Correlated Table.

[8] See Volume IV of the Appendix, 2609-2612; see also number 22 of the Correlated Table.

[9] See Volume IV of the Appendix, 2613-2615; see also number 39 of the Correlated Table.

[10] See Volume I of the Appendix, 37-52 and Volume II, 1167-1185; see also numbers 43 and 44 of the Correlated Table

copy of their notices on January 25, 2005. Both resolutions were entered by the Honorable Judge Hector Clemente Delgado, Superior Judge.

V. Other Recourses that are pending before this Court or the Court of Appeals

6. As of the date of filing of this recourse there is no other recourse pending resolution before this Supreme Court or before the Court of Appeals.

VI. Brief summary of substantive and procedural facts

7. The Rosso Farm was purchased by the Commonwealth of Puerto Rico (hereinafter the "Commonwealth") through expropriation under sovereign right of eminent domain on December 5, 1963. See: Commonwealth of PR vs. Rosso, 95 D.P.R. 501 (1967). Therefore, Mr. Jorge Rosso, the decedent was the owner of record of the expropriated parcels. At the time of the expropriation, the expropriated parcels had jointly a superficial capacity of 337.7225 "cuerdas" located in the Juan Sánchez Ward of Bayamón as well as in the Santa Clara Ward and the Los Frailes Ward of Guaynabo, separated by State Road #177 (a/k/a Los Filtros Ave.). As a result of said separation, the North portion of the farm remained with a capacity of 199.771 "cuerdas" and the South with the balance of 137.9515 "cuerdas".[11] Since then, said parcels are known as the "Rosso Farm".

8. Several years after the expropriation and once the corresponding payment was made to the Commonwealth by the Lands Administration (hereinafter the "LA"), by Resolution entered February 24, 1975 by the Hon. Judge Dan F. Rodríguez of the Superior Court of Puerto Rico, Expropriations Part, in cases #E63-1652, 1655 and

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[11] See the amended Complaint, Volume II of the Appendix, 2000-2078, see also number 15 of the Correlated Table.

1656 provided that the Rosso Farm be registered in the name of the LA. Said agency never made a cease determination of public usefulness with regards to the expropriated farm during the time it possessed it nor acted on the farm within the period of 15 years provided by its own Organic Act.[12]

9. On January 14, 1982, the LA sold a portion of the Rosso Farm to the Urban Renewal and Housing Corporation (hereinafter "URHC"). On that same day, the URHC performed several segregations and entered into the first contract whereby it sold a portion of the land of the Rosso Farm to a private developer, to wit, Casa Linda del Sur Associates, S.E..[13] It is not yet known, given the fact that it was not stated through the discovery of evidence ordered by the Court of First Instance which was interrupted by the certiorari recourses filed by defendants, whether in this sale or any other subsequent one[14] there was compliance with the anti-inflation and anti-speculation requirements (among others) demanded by the law itself that created the LA[15] and which this Honorable Supreme Court wisely interpreted in the case Commonwealth vs. Rosso, supra. In other words, we do not know, at this stage when, how, and what restrictions, if any, were imposed on the lands as a condition to develop them

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[12] 23 L.P.R.A. §311f(q).

[13] See Volume I of the Appendix, 386-396.

[14] We need to state that Plaintiff-Petitioner, at this stage of the litigation, does not intend to void the prior sales related to the housing developments built on the different parcels or portions segregated from the expropriated farm taking into consideration the social impact said intention would have, regardless of their merits strictly under law. The only portion of this land which is really subject of the litigation is the one acquired by the GDB which is still undeveloped and which is described hereinbelow, together with the parcels belonging to the Municipality of Bayamón described in the Amended Complaint (Volume II of the Appendix, 2020) which are in the same situation.

[15] See the Statement of Purpose of Law Number 13 of May 16, 1962, 23 L.P.R.A. §§311, et seq.

so that they would guarantee the purpose of the law and the public goal that was sought as interpreted in Commonwealth vs. Rosso, supra.

10. On July 3, 1985, the LA transferred the remnant of the Rosso Farm to URHC.[16]

11. The URHC went through a process of dissolution and liquidation, the Office for the Liquidation of the Accounts of the Urban Renewal and Housing Corporation being created (OLAURHC), by Act 55 of August 9, 1991, 17 L.P.R.A. §27(c). The OLAURHC, in accordance to said Act, was designated as the organism responsible for liquidating the assets and liabilities of the URHC, determine its functions and responsibilities and provide for its operation and funds. It was subsequently dissolved by mandate of Act 106 of June 30, 1998, 17 LPRA §§27aa, et seq.

12. It was not until March 5, 1996 that the Planning Board approved a global planning concept for the sector where, among others, the parcels comprising the "Rosso Farm" are located and particularly, the remnant that pertains to us. Said plan is entitled "Master Conceptual Plan Bayamón River Community North Area", (hereinafter the "Master Plan").[17]

13. On December 30, 1997, by public deed number 12, executed before Notary Public, Mr. Guillermo R. Picó Gómez, the OLAURHC conveyed and transferred to GDB the remaining part of the Rosso Farm that had not been developed.[18] Said transfer was made as part of the payment of a debt URHC had with the GDB.

14. On March 22, 2000, by public deed number 6 executed before Notary Public Guillermo R. Picó Gómez, the GDB segregated the acquired real estate

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[16] See Volume I of the Appendix, 798-802

[17] See Volume I of the Appendix, 246-369

[18] See Volume I of the Appendix, 820-828

by public deed number 12, before, and sold to Mora Development, S.E., three parcels ("Parcel 1-A"; "Parcel for Public Use" and "Parcel 1-B") which total capacities amount to 29.73169 "cuerdas". No restriction that could translate into or that would mean public use was required from the purchaser when title was transferred.[19]

15. After the referred segregation and sale and other previous ones made during the course of the years[20] the remnant of the original Rosso Farm, still undeveloped and the title of which is held by GDB, is the one described as follows:

> "URBAN: Parcel of land located in the Wards Juan Sánchez of Bayamón and Pueblo Viejo of Guaynabo, with a superficial capacity of nine hundred thirty three thousand five hundred fifty nine point five thousand three hundred forty eight square meters (933,559.5348 m^2) equivalent to two hundred thirty seven point fifty two "cuerdas" (237.52 "cuerdas"); bounding on the North, with Jardines de Caparra Urbanization, land property of the Municipality of Bayamón which separates them from a road known as El Polvorín, land property of Martin Aquino, Tomas Mendez Rosa and Saturno Ortega and the Bayamón River; on the South, with the right of way of State Road Number One Hundred Seventy Seven (177) or Lomas Verdes Avenue and as a consequence, the farm described is

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[19] See Volume I of the Appendix, 834-849.

[20] See "Attachment B" of the Amended Complaint (Volume II of the Appendix, 2043-2045).

> affected with a sound dampening zone, with land from the main farm and with Prado Alto Urbanization; on the East with El Buen Samaritano Ward with land from Francisco Alejandro, William Cuevas, Tomás Rosa and Valles de Guaynabo, Inc. and Urbanizations El Prado and Torrimar; on the West, with the Bayamón River."

16. The remnant described above became the subject of this litigation when, on August 21, 2000, the GDB published a notice of auction in a newspaper of general circulation in Puerto Rico requesting bid proposals for the parties interested to purchase it.[21] Prior to the referred publication of the notice of auction and up to this date, no communication or resolution whatsoever exists that the GDB, the OLAURHC, the URHC, the Commonwealth of Puerto Rico and/or its agencies and instrumentalities have sent to plaintiff stating the intention and desire to sell said remnant of the Rosso Farm, as established by the law known as the "Sales Act for Public Land", Act Number 12 of December 10, 1975 (hereinafter "Act 12"), 29 L.P.R.A. §§31 et seq., in its sections 31(d) and 31(e) and Act Number 13 itself of May 16, 1962, 23 L.P.R.A. §§311, et seq. (hereinafter "Act 13"), in its section 311m(g).
17. On October 30, 2000 in light of GDB's actions and the publication of the request for auction, Plaintiff - Petitioner, Mrs. Rosso, filed a "Complaint Regarding Request for Declaratory Judgment"[22]

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[21] See Volume II of the Appendix, 2068 (in the Amended Complaint). The Municipality of Bayamón did the same thing with the parcels that were transfered free of charge on December 22, 2000 after the general elections and after the original complaint in this case was submitted

[22] See Volume I of the Appendix, 53-78, see also number 46 of the Correlated Table.

filed before the Court of First Instance and which was subsequently amended; where the Government Development Bank (hereinafter "GDB") and other unknown defendants appeared as original defendants.[23]

VII. Findings of Errors

1. **THE COURT OF APPEALS ERRED BY RULING THAT PLAINTIFF-PETITIONER INTENDS TO COLLATERALLY ATTACK THE JUDGMENT THIS SUPREME COURT ENTERED IN THE CASE COMMONWEALTH VS. ROSSO, 95 D.P.R. 501 (1967).**

2. **THE COURT OF APPEALS ERRED BY REPEALING THE RESOLUTIONS OF COURT OF FIRST INSTANCE AND DISMISSING THE COMPLAINT WITHOUT EXHAUSTING THE PROCEDURE OF DISCOVERY OF EVIDENCE THAT WOULD HAVE BEEN CONDUCIVE TO PINPOINTING THE FACTS ON WHICH IT COULD BE DETERMINED WHETHER IN EFFECT ANY OF THE REAL ESTATE TRANSACTIONS OF THE EXPROPRIATED FARM RESPONDED TO A PUBLIC PURPOSE.**

3. **THE COURT OF APPEALS ERRED BY FINDING THAT THE PUBLIC PURPOSE FOR WHICH THE ROSSO FARM WAS EXPROPRIATED HAS NOT CEASED WITHOUT HAVING ANY FACTUAL BASIS FOR SAID FINDING OR CONCLUSION.**

4. **THE COURT OF APPEALS ERRED BY ESTABLISHING THAT THE FINDNG OF THE**

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[23] See the amended Complaint, Volume II of the Appendix, 2000-2078; see also number 15 of the Correlated Table.

EXISTENCE OF A PUBLIC PURPOSE IS A MATTER OF LAW AND NOT OF FACT.

5. **THE COURT OF APPEALS ERRED BY DETERMINING THAT ACT 13 IS THE ONE THAT APPLIES TO THE CONTROVERSY AT HAND AND NOT ACT 12.**

VIII. Discussion of the errors stated

1. THE COURT OF APPEALS ERRED BY RESOLVING THAT PLAINTIFF-PETITIONER INTENDS TO COLLATERALLY ATTACK THE JUDGMENT THIS SUPREME COURT ENTERED IN THE CASE COMMONWEALTH VS. ROSSO, 95 D.P.R. 501 (1967).

The essence of this case is whether the State, validly exercising its power of eminent domain and expropriating a portion of land to thus avoid rampant speculation with the land, may validly and legally wait 37 years for those lands to increase in value, thereby becoming a speculator, and offering them to the highest bidder, in public auction, without any kind of limiting restrictions, except the mere subjection of the land to a Master Development Plan which would be equally applicable to any other land in Puerto Rico, expropriated or not, that were submitted to said plan.[24]

The answer to this question must be a rotund and emphatic NO, otherwise we would face a complete failure of justice.

The CA begins its judgment by relating the *certioraris* filed before it and determining that their historical origin lies in the expropriation of land authorized in Commonwealth vs. Rosso, supra.[25] This is false. These recourses originate, as we have established in the brief statement of facts already presented, from the Amended Complaint filed by Plaintiff-Petitioner when the GDB published a notice of auction during mid-2000.[26] This fact was the one that originated several of Plaintiff-Petitioner's causes of action, because at the time the GDB intends to auction to the highest bidder the remnant of the Rosso Farm, without any type of restrictive limitation, this constitutes, in fact, a cessation of the public purpose the Rosso Farm might have for the State.

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[24] This question has been presented in several documents Plaintiff-Petitioner has submitted to the CFI and to the CA. Likewise, it was argued at the oral hearing that gave way to the CFI's Resolutions which the CA has repealed.

[25] See Volume V of the Appendix, 2618-2641.

The CA continues presenting a long and unnecessary discussion about this Court's decision in Commonwealth vs. Rosso, supra, to mistakenly conclude that Plaintiff-Petitioner's allegations constitute collateral attack to the judgment entered in Commonwealth vs. Rosso, supra.[27] The CA bases itself on the allegations made in the Amended Complaint, paragraphs 9 and 12.[28] Both paragraphs were drafted based on the subsequent facts that have taken place in the 37 years following the expropriation. The CA is not aware that what is alleged therein cannot constitute an attack to the expropriation, since it was already resolved, but a presentation of the subsequent facts that evidence that the purposes for which the expropriation was made of the Rosso Farm were never executed.

Collateral estoppel is a doctrine of the English law which has been incorporated to Puerto Rican law as a corollary of the former doctrine of adjudication, which has a roman origin.[29] Millán vs. Caribe Motors Corp., 83 D.P.R. 494 (1961). This doctrine precludes all subsequent litigation, between the same parties, on points debated and resolved by a valid firm judgment. Schneider vs. Puerto Rico Bar Association, 870 F. Supp. 1098 (1987). This Court has stated that "collateral estoppel by judgment doctrine is applicable when an essential fact for the entering of a judgment is truly explained and is determined by a final and valid judgment, since said determination is conclusive in a second case between the same parties even if they are different causes of action involved". Capó Sánchez vs. Secretary of the Treasury, 92 D.P.R. 837 (1985); Pereira vs. Hernández, 83 D.P.R. 160 (1961).

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[26] It must be stated that the Court of Appeals consolidated three certioraris that came from two resolutions issued by the CFI and which were not related to the order nor the arguments of the certiorari with which these other were consolidated (KLCE200401540). Further, the CA only requested Plaintiff-Petitioner to make statements with regards to this last certiorari KLCE200401540, but it NEVER requested statements with respect to the other three certioraris which form the body of the appealed judgment.

[27] See Volume V of the Appendix, 2624.

[28] See Volume II of the Appendix, 2012.

[29] In roman law it is called res judicata.

The analysis of this Court's jurisprudence with regards to the collateral estoppel by judgment shows that this doctrine is not applicable to this case. Plaintiff-Petitioner has not challenged the expropriation nor the basis on which the same was made. What Plaintiff-Petitioner presents are the facts and actions of the State **SUBSEQUENT** to the expropriation and not the prior ones. The attack is not to Act 13, nor to the reasons this Court gave to uphold its constitutionality, but, contrary to the CA's statement, what Plaintiff-Petitioner states is that the Commonwealth, through its agencies, **weakened**, to such degree, the purpose of the law and the judicial judgment that interpreted it, that the manipulation with the farm neither produced effective controls in the sales prices, nor hindered the coarse inflationary speculation it was trying to avoid.[30] In a limited examination of the true matters in this case, the CA establishes as unchangeable cannon the determination made by the Supreme Court in Commonwealth vs. Rosso, supra, by endorsing the purposes that served as basis for the LA's Organic Act (Act 13) permanently and eternally, in other words, without time limitations, which is incorrect.

An in-depth examination of the decision in Commonwealth vs. Rosso, supra, contrary to the examination made by the CA, makes evident that this Supreme Court based its opinion on an exhaustive economic and social analysis of the situation of Puerto Rico at that particular historic moment.

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[30] We want to state that we have always started from the premise that the decision in E.L.A. vs. Rosso, supra, is correct under Law for which the statements of the CA that Plaintiff-Petitioner intends to collaterally attack the decision in E.L.A. vs. Rosso, supra, is not only false and mistaken but also constitutes a non sequitur of the allegations

The Supreme Court engages 12 pages of its opinion to present the particular facts that move the Legislative Assembly to promote Act 13 (Commonwealth vs. Rosso, supra, pages 506-517, specifically see footnote number 2), and concludes that "unquestionably, Act Number 13 has all the characteristics of an emergency legislation - cf. Art. 7(c), (e), (o); Arts. 8, 11, 14(g) 18-)))))) its provisions proportionate to the seriousness of the problem to be attacked, which the Legislative Assembly immediately assigned a substantial amount of public funds for its compliance. Certain remedies for certain wrongs". (See Commonwealth vs. Rosso, supra, pgs. 516 and 517).

It is the emergency situation that the country was going through at that time, in other words, the rampant speculation with land prices, the population density, the artificial lack of land fabricated by the speculators and the disastrous future projections, what the Supreme Court considered when justifying Act 13 and the creation of a land reserve ("land bank") on behalf of the LA for public benefit.

Unfortunately all of these good intentions were just that,: mere intentions which never became real. This Supreme Court can take judicial knowledge of what really happened in a considerable portion of the land of the Rosso Farm. In the past, the extinct URHC sold almost 100 "cuerdas" of the Rosso Farm for private developers to build urbanizations such as Veredas del Río, where there exists no social interest housing. This Court may take judicial knowledge of the type of residences that were built in the premises that comprise the South portion of the expropriated farm.[31] We are not dealing here with an "incidental benefit" of a third party who develops the area and builds in it public interest housing, as the appealed and the LA intend to prove, but that the ultimate purpose, in the case of Alturas de Torrimar, to mention one, was the exclusive

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arguments that Plaintiff-Petitioner has made in all of the documents it has filed before the CFI and the CA. See Volumes I and II, pages 660 and 2004, respectively

[31] See Volume II of the Appendix, 2043-2048.

profit of the developer and the State by selling the property for an absolutely private purpose. It seems important to us to again state, that the Plaintiff-Petitioner's intention is not to destroy what has been developed up to now on the expropriated land. In fact, in the process of this case plaintiff party has been voluntarily dismissed against the great majority of the defendants or has not submitted them to the court's jurisdiction, focusing the controversy on the remnant of the Rosso Farm, the title of which is held by the Government Development Bank and where there has been no development whatsoever.[32] However, this Court will understand that the development of the 100 "cuerdas" sold by URHC is highly pertinent, since this proves that the purposes for which the Farm was expropriated never took effect and this is precisely what the GDB intends to continue doing with the Farm, something this Court cannot allow, and neither to the Municipality of Bayamón with its parcels originated from the Rosso Farm.

The CA, incorrectly, refuses today to analyze the reality before it and prefers to cover it with a simplistic analysis of a decision made 37 years ago, which answered to a very particular reality. In this process, the CA intends to erase with a stroke 37 years of history and actions by defendants in this case which were and intend to continue being illegal, improper, ultra vires, contrary to the legislative intention, the text of the law and the judicial order of this, our highest forum.

2. THE COURT OF APPEALS ERRED BY REPEALING THE RESOLUTIONS OF THE COURT OF FIRST INSTANCE AND DISMISSING THE COMPLAINT WITHOUT EXHAUSTING THE PROCEDURE OF DISCOVERY OF EVIDENCE THAT WOULD HAVE BEEN CONDUCIVE TO PINPOINTING THE FACTS ON WHICH IT COULD BE DETERMINED WHETHER IN EFFECT ANY OF THE REAL

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[32] In spite of the statements made by the CA with respect to the number of defendants in this case, the truth is that there has been a voluntary dismissal against all defendants in Groups "D"; "G" and "H"; the majority of Group "C" and Group "I".

ESTATE TRANSACTIONS OF THE EXPROPRIATED FARM ANSWERED A PUBLIC PURPOSE.

3. **THE COURT OF APPEALS ERRED BY FINDING THAT THE PUBLIC PURPOSE FOR WHICH THE ROSSO FARM WAS EXPROPRIATED HAS NOT CEASED WITHOUT HAVING ANY FACTUAL BASIS FOR SAID FINDING OR CONCLUSION.**

4. **THE COURT OF APPEALS ERRED BY ESTABLISHING THAT THE FINDING OF THE EXISTENCE OF A PUBLIC PURPOSE IS A MATTER OF LAW AND NOT OF FACT.**

Errors 2-4 are INTERrelated and we shall proceed to discuss them jointly.

Before going on to discussing whether the public purpose had ceased for the Rosso Farm and whether this should be settled through evidence because it constitutes a matter of facts and not of law, it is necessary to review the jurisprudence of this Court and of the United States Supreme Court on what constitutes a valid public use in order for the State to be able to exercise its power of eminent domain. This jurisprudence may SHED light on the content of what constitutes public use and thereby be able to determine the outline of this concept and its applicability to this case.[33]

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[33] We hope the fact that the concept of public use has been discussed almost exclusively in expropriation cases will not be interpreted as though Plaintiff-Petitioner is re-litigating the matter of public use of the expropriation that was made in E.L.A. vs. Rosso, supra. It seems that it has been made clear that said expropriation was well made and is very justified, however, it is necessary to discuss this
jurisprudence in order to determine whether GDB's actions which brought forth this Complaint, in other words, the publication of a notice of auction to the highest bidder, constitutes a valid public use for the State to continue holding title of the Rosso Farm or whether it's obligated, as we allege, to return it to its original owner because the public use for which it was expropriated has ceased.

The first sentence of Section 9 of Art. II of the Constitution of the Commonwealth of Puerto Rico[34] provides that "private property will not be taken or injured for public use unless by payment of fair compensation and in accordance to the manner provided by law". This Court, pursuant to that mandate, has established that the power of the State to expropriate private property IS NOT absolute and is limited by two requirements: (1) that the property expropriated be for public purpose and (2) that there exists payment of a fair compensation. López vs. Electric Power Authority, 151 D.P.R. 701 (2000); Culebra Enterprises Corp. vs. E.L.A., 143 D.P.R. 935 (1997); Culebra Enterprises Corp. vs. E.L.A., 127 D.P.R. 943 91991); Commonwealth vs. Rosso, supra, Lands Administration vs. Nerashford Dev. Corp., 136 D.P.R. 801 (1994).

Historically, this Court has accepted the full legislative discretion with regards to the determination of "public use", subject to a modest judicial intervention. Commonwealth of Puerto Rico, represented by its Governor v. Estate of Felipe Gautier, etc., 81 D.P.R. 580 (1959); McCormick v. Marrero, Judge, 64 D.P.R. 260, 267 (1944); COMMONWEALTH v. Fajardo Sugar Co., 79 D.P.R. 321, 330-334 (1956). This Court has endorsed the expropriation of land mainly for: (1) eliminating slums; Municipality v. Planning Board, 68 D.P.R. 646, 649 (1948); Autoridad Sobre Hogares v. Sagastivelza, 72 D.P.R. 276, 284 (1951); (2) distribute, convey or lease the expropriated land to private persons in order to achieve a public purpose or benefit; COMMONWEALTH v. Fajardo Sugar Co., supra, pgs. 335-336; Pueblo v. Saldaña, 69 D.P.R. 711, 716-721 (1949); People of Puerto Rico v. Eastern Sugar Associates, 156 F. 2d 316, 323-324 (CCA 1, 1948) cert. denied, 329 U.S. 772 (1946); (3) benefit the tourism industry through the use of expropriated land in order to build hotels; The Commonwealth of Puerto Rico, Represented by the Governor of Puerto Rico v. 317.813 "cuerdas" of Lands in Fajardo, Puerto Rico, Tomás

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[34] Const. P.R. Art. II §9.

Ramírez, Federal Lands Bank of Baltimore and Ramon Western, 84 D.P.R. 1 (1961) and cases cited therein; Berman v. Parker, 348 U.S. 26, 33; 99 L. ed. 27, 38 (1954); López v. Planning Board, 80 D.P.R. 648, 662-663 (1958); COMMONWEALTH v. Aguayo, 80 D.P.R. 552 (1958); and (4) create a land reserve (land bank) to avoid speculation in land prices, Commonwealth vs. Rosso, supra.

Before going on to the jurisprudence in the United States, we must state that in Puerto Rico, this Court has never categorically defined what constitutes a public purpose for purposes of Article II, Section 9 of the Constitution of the Commonwealth. This Court, rather, has considered the specific facts of each case and the historic reality at the time of the facts in order to later give content to the concept of "public use". Likewise, it must be stated that this Court has NEVER endorsed as a valid public purpose for the State to speculate with expropriated property in order to profit with the increase in value of those property. This last point shall be enhanced further on.

Let us look at the development of the concept of "public use" in the jurisprudence of the United States Supreme Court. The constitutional prohibition appears in the Fifth Amendment which establishes: "[the] private property shall not be taken for public use without fair compensation". The Supreme Court has always held the limitation of "public use" in order for the exercise of eminent domain by the State to be valid and has prohibited the expropriation of private property for "private use"; Hawaii Housing Auth. v. Midkiff, 467 U.S. 229, 245 (1984) ("A purely private taking could not withstand the scrutiny of the public use requirement; It would serve no legitimate purpose of government and would thus be void"); Thompson v. Consolidated Gas Utilities Corp., 300 U.S. 55, 80 (1937); Hairston v. Danville & W. Ry. Co., 208 U.S. 598, 605-06 (1908; Missouri Pac. Ry. Co. v. Nebraska, 164 U.S. 403, 417 (1896).

The United States Supreme Court, as well as that of Puerto Rico, has never categorically defined the concept of "public use" in the context of an expropriation. However, it has established five valid uses for the State to be able to exercise its power of eminent domain. These are: (1) expropriate private property in order to keep it and exercise its governmental functions; United States v. Gettysburg Elec. Ry. Co., 160 U.S. 668, 681-82 (1896); Old Dominion Lands Co. v. United States, 269 U.S. 55, 66 (1925); (2) use the expropriated property to build highways, public parks, avenues and other public works to which the general public will have access; Rindge Co. v. County of Los Angeles, 262 U.S. 700 (1923); United States ex rel. TVA v. Welch, 327 U.S. 546, 551-52 (1946); (3) expropriate private property in order to build railways, electrical or cable TV infrastructure or to render other types of services to the public; National R.R. Passenger Corp. v. Boston & Maine Corp., 503 U.S. 407, 422 (1992); Mt. Vernon-Woodberry Cotton Duck Co. v. Ala. Interstate Power Co., 240 U.S. 30, 32 (1916); Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 424-25 (1982); Head v. Amoskaag Mfg. Co., 113 U.S. 9, 19 (1885); (4) use of private property to fight slums and dilapidated communities; Berman v. Parker, 348 U.S. 26, 32 (1954); Randolph v. Wilmington Housing Auth., 139 A. 2d 476, 482 (Del. 1958); Allydonn Realty Corp. v. Holyoke Housing Auth., 23 N.E.2d 665, 668 (Mass. 1939); and (5) use of private property to execute an Agrarian Reform in Hawaii, which constitutes a very particular public use instead of an ample category; Hawaii Housing Authority v. Midkiff, 487 U.S. 229, 241 (1984).[35]

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[35] For a synthetic exposition of these categories and a more detailed discussion of this jurisprudence, see the "Brief" presented by the Reason Foundation as amicus curiae in the case of Kelps vs. City of New London, No. 04-108, before the Supreme Court of the United States, http://www.rddi.org/KeloAmicusFinal.pdf

An analysis of the United States jurisprudence leads us to the same conclusion that the courts, in their interpretative function of the Constitution, be it of the United States or that of Puerto Rico, have not endorsed for the State to become a speculator in land and expropriate private property in order to hold it for 37 years in order to later profit from the increase in value of the land by the sale of this property via public auction to the highest bidder, without limiting restrictions of any kind with regards to the use that will be given to the land or the margin of profit the private entity that purchases it will obtain if it is subsequently developed and negotiated with third parties.

As we have stated, the decision in Commonwealth vs. Rosso, supra, intended above all to protect future generations of Puerto Ricans from the effects of land speculation, which although it has always been present in our historical reality, at that time it had become rampant and attempted against the future of the country. What the Legislative Assembly intended was for the LA to create a reserve (land bank) to regulate prices adequately against speculation. (Commonwealth vs. Rosso, page 513). but this is precisely the opposite of what the GDB intends to do with the remnant of the Rosso Farm, by publishing a notice of auction in the year 2000, 37 years after the expropriation of the Rosso Farm, without limiting restrictions of any type, offering the land to highest bidder, trying to profit with the income the land has acquired during the past 37 years and boldly allege that this is a public use. How can the Court of Appeals endorse this action when it is contrary in all senses to what was resolved in Commonwealth vs. Rosso, supra? We do not know.

To say that the land is subject to a Master Development Plan is the same as saying that they have to abide by to the rest of the laws of the country. Of course, anyone who wants to develop in Puerto Rico will have to be subject to the laws and zoning regulations enacted by the Commonwealth's agencies and/or its municipalities, but this argument is a mere redundancy. The Court of Appeals, Second Panel of the Bayamón Regional Circuit, case KLCE2001100346, through

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resolution entered on May 22, 2001, of which we ask judicial knowledge be taken, clearly established the following:

> "Likewise, the statement that '...at the Rosso Farm new residences must be developed, subject to the Master Plan approved by the Commission for the Development of the Bayamón North River Community', does not necessarily imply that the Rosso farm is still subject to public use, for the mere fact that it is subject to the mentioned territorial development plan, which in like manner and form affects all other land in the same territorial demarcation, either t previously expropriated by the State or no." [Emphasis added}

Even more dramatic are the GDB's own expressions with regards to the public use of the land one of defendants is interested in, El Jardin de Río Piedras, Inc. The GDB filed a "Motion for Dismissal and Opposing Urgent Motion Requesting Provisional Remedies Under Rule 56 of Civil Procedure" in case DAC 1998-1056(504), where El Jardin de Puerto Rico files a complaint against GDB, among others, and the GDB states in its motion the following:

> *"Plaintiff's interest in developing 'El Jardin de Río Piedras' lacks public interest.* ***The project is completely private, and any benefit that may arise would be for the developers of the project****, the owners of plaintiff herein. [...] The fact that plaintiff has not claimed previously against the State with regards to the prior segregations,* ***does not imply waiver to claim the preferred right in***

> ***light of the knowledge of the public auction of the remnant." (Emphasis added)***[36]

This being so, it is forceful to conclude that the GDB has no public use for the Rosso Farm, since it has agreed to sell a portion of it to El Jardin de Río Piedras without any limitation or reserve, whose interest, by the GDB's own words, is completely private and lacks public interest. Likewise, in the year 2000, the GDB published a notice of bids to sell in public auction the remnant of the Rosso Farm to the highest bidder, without any limiting restriction. Said action was solely governed by the yearning for profit produced by the speculation the GDB had made with the Rosso Farm.

What the Supreme Court validated in Commonwealth vs. Rosso, supra, was a futuristic vision. The reserve was not a purpose in itself, although it was defined as a public purpose, because the reserve continued effectively being a means to reach a very specific public purpose which consisted of remedying the emergency situation the country was going through due to the rampant speculation with the land prices.

Therefore, Commonwealth vs. Rosso, supra, as we have repeatedly stated throughout the course of this case, but were ignored by the CA, is correct under Law and responded to a very particular social and economic reality at an also particular historical time of Puerto Rico. We are sure that if the State had said at that moment to the Supreme Court what it would do with the expropriated land was to develop high cost urbanizations and that they would reserve the rest of the land so that it would increase in price, and after speculating with it, profit with the capital increase the land experimented, we very much doubt that the Supreme Court would have resolved Commonwealth vs. Rosso, supra in the manner it did. What the CA intends today is to turn its back on this undeniable reality and escape through the side by mistakenly resolving that the Rosso Farm conserves a valid public use. This is absolutely fallacious, as we have seen.

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[36] See Volume I of the Appendix, 765.

Neither can the State take property away from an individual and give it to another individual, whose sole purpose will be to profit by the development of urbanizations that do not answer to any social interest nor was its construction subject to the restrictions that are consistent to the letter and purpose of Act 13 and its interpretation by this Honorable Supreme Court in Commonwealth vs. Rosso, supra.[37] This Honorable Court must bear in mind that even the residences El Jardin intends to build in the residential parcels it is interested in do not pursue public purpose, as the GDB itself has reiterated.[38]

The legislative intention in Acts 12 and 13 is clear and the interpretation given by the Supreme Court in Commonwealth vs. Rosso, supra is equally clear; this is not in discussion. What happens here is that it is the State itself who now, 37 years later, intends to violate this intention and its interpretation, and even worse, said intention is endorsed by the Court of Appeals in the judgment appealed herein. We emphasize that we do not intend with this case to judge whether or not the original expropriation ("Taking") was valid. What is questioned is whether, pursuant to Acts 12 and 13, which contain the clear legislative intention, the State can now go against that intention in order to fairly obtain a purpose contrary to public use that had been established in order to justify the expropriation, and in this manner speculate with the expropriated land and profit with the fruit of that speculation.

In a simple footnote the Court of Appeals mentions and incorrectly interprets the case of Kelo vs. City of New London, 159 L.Ed. 2d 857, 126 S, Ct. 27, 2004 U.S. Lexis 5008 and we believe it is necessary to discuss it herein. The CA cites this case to conclude that the concept of "public use" is being enhanced to justify the expropriation of the private property for the direct benefit of the State. This seems to us to be another simplistic reduction of what the Kelo case really represents. The Kelo case deals with whether the private property (other than ruined or squandered property) may be expropriated by the State to give it to another private entity to develop it so that the State can benefit from taxes derived from property taxes.[39] The United States Supreme Court allowed several interventions of amici curiae[40], has just finished hearing the oral arguments in the case and proposes to issue an opinion by the end of June. In essence, the Kelo Case considers whether it is legitimate as a public use for the State to take away a property from A in order to give it to B so that B will reach a result C that will benefit the State, when A and B are private entities. In the Kelo case, although A and B are private entities, they do not have the same capacity to develop in order to reach a C which is what the State is interested in. This is clearly distinguishable form what happens here. First, the expropriation is not being litigated in this case and the Kelo case is an expropriation case. But it is even more distinguishable because in this case, A and B have the same capacity to reach C. In other words, Rosso, the same as any other bidder engaged to the development of properties in Puerto Rico, can develop the Rosso Farm subject to the mentioned Master Plan. Then if A and B have the same capacity why not return the land to A, who has a preferred right of acquisition over the land because it was its original owner, but instead give it to B, who is a bidder with no previous relationship with the land in question?

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[37] See the interesting case of Caster v. Tide Water Co., 18 N.J Eq. 54 (1866), which is still in effect in spite of its antiquity and which prohibits the State from taking property away from a private entity to give it to another.

[38] See Volume I of the Appendix, 765.

The CA replies the above stating that Plaintiff-Petitioner must appear at the auction as any other bidder. This is erroneous, mistaken and contrary to law. Plaintiff-Petitioner has an unquestionable preferred right to purchase the land once the public use for which it was expropriated ceases, under Act

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[39] Kelo v. City of New London, CT, E.A. USSC 04-108: the matter stated in English is: "What protection does the Fifth Amendment's Public use requirement provide for individuals whose property is being condemned, not to eliminate slums or blight, but for the sole purpose of 'economic development' that will perhaps increase tax revenues and improve the local economy?"

[40] We respectfully suggest again an examination of the brief filed by Reason Foundation in this case. http://www.rppi.org/KeloAmicusFinal.pdf

12, and if there exists or not a public use at present can only be determined through evidence, as had been correctly determined by the CFI. The mere subjection to the Master Plan does not constitute that public use, as has been discussed, and it cannot be a determination of law, as the CA intends.

The real matters in this case must be settled through evidence, as the CFI intended to do by issuing the resolutions repealed by the CA. The ruling made by the CA that the existence or non-existence of a public use for the Rosso Farm is not a matter of law is erroneous. The jurisprudence of this Supreme Court and the United States Supreme Court that we have presented establishes just the opposite upon evaluating each case on their merits by the evidence of the facts that might help to determine whether effectively a public purpose justifying the expropriation ("taking") exists. This, we emphasize, is what the CFI intended to do by DENYING the requests for summary judgment and dismissal made by the Appealed.

As recently as 2001, this Court had before its consideration the case Municipal Government of Vega Baja vs. Lands Administration, 2001 T.S.P.R. 101. In this case this Court interpreted for the first time the Regulation for Acquisition and Disposition of Real Estate Properties of the Lands Administration, Regulation No. 4668 of January 29, 1992 pursuant to Act 13, mentioned avobe. In order to determine whether Regulation No. 4668 made feasible the application of the public policy stated in Act 13, this Court considered specific facts that arose from the case file. This is consistent with what we have already mentioned when analyzing the jurisprudence in Puerto Rico and the United States, in other words, that the Courts, upon making the determination of whether a "public use" exists that will endorse an expropriation or which determines whether the property may be disposed of by the State, consider the facts of each case in order to be able to adequately interpret the concept of "public purpose" or "public use".

Without facts supporting its position and which infringe the allegations made by Plaintiff-Petitioner, a public agency or instrumentality representing the State cannot **UNILATERALLY** determine, as the GDB intends, that its public purpose now consists in speculating with real estate property in order to make the State's assets profitable. If the legislature itself is limited by the Constitution, much more so should agencies be, when they receive their power by delegation. If we allow any agency to un-restrictively determine what is its power boundary with regards to the use of expropriated private property we will approach a despotic, tyrannical, style of government which acts by executive bands, without observing the law or purposes of the law or judicial opinions.

We reiterate that the anti-inflation purposes of Act 13 were directed to keeping the low cost of residences and not to promote speculation and profit of private industry or the government itself "buying cheap and selling high" as happened with the expropriated land. What the government wants to hide by refusing to submit to discovery of evidence behind the guise of a motion for dismissal, and which the CA has authenticated, is precisely this ominous and contradictory result that blatantly frustrated the legislative intention given the ineptitude and/or possible prevarication of its executive officers. This is precisely why we are before the judicial power requesting a remedy and with the hope that a wise judicial attention to this claim will serve as an example and restraint to present and future officers so that they will act with the prudence that is expected of them.

The CA erroneously understands that on this occasion the conditions are given to consider the matters stated on their merits. We are precisely missing the necessary evidence to establish the fundamental matters of the causes of action of Plaintiff-Petitioner. Already this same Panel of the CA in case KLCE200100346, as we have previously quoted, had established that mere subjection to the Master Plan did not imply a public use for the Rosso Farm, for which, as a purely logical consequence, we would have to obtain evidence of facts that would shed light over that supposed public use. The truth is that said evidence has not been provided and that Plaintiff-

Petitioner has presented the CFI evidence that shows that the said notice of auction of 2000 made by the GDB had no limitative restrictions of any kind consistent with what was resolved in Commonwealth vs. Rosso, supra, at page 516 where it reads:

> *"It was an express mandate of the Legislative Assembly to the Administration, among other express directives, that when the Administration sells or in any other manner disposes of its property for the purchaser to develop it into urbanizations or any other kind of project which implies a subsequent sale to particular persons, it must include a limiting restriction of the profits which with regards to the land and any other cost of the project, the purchaser shall obtain.-Art. 7(z)."*

Again, the decision in Commonwealth vs. Rosso, supra intended to restrain the rampant speculation and the greedy profit associated to the land. This is contrary to what the GDB intends today and what the CA endorses in its judgment.

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5. THE COURT OF APPEALS ERRED BY DETERMINING THAT ACT 13 IS THE ONE THAT APPLIES TO THE CONTROVERSY AT HAND, AND NOT ACT 12.

Subsequent to the appellative forum's decision in 2001, quoted in the previous paragraph and where it is clearly established that a motion for dismissal and/or partial summary judgment does not proceed, which the GDB had already filed at that time and which it later recreated and filed again trying again to distract the instant forum from the real matters to be discussed in this litigation, the CFI correctly ruled that (1) in fact, it is Act 12 the one that applies to the facts of this case, (2) Plaintiff-Petitioner's action is not time-barred and (3) it will hear evidence in order to determine whether the public use of the land remains. The instance forum states:

> *We are aware of the statements given by our Honorable Supreme Court in Commonwealth vs. Rosso, supra, and we have examined the provisions of Act 13 and of Act 12. Therefore, as we shall see further on, the determination on public use and usefulness of the land involved in this case has to encompass any determination by this Court on their disposition.*
>
> *As a consequence, we determine that in the case of sale by the LA of real estate property acquired that has ceased having usefulness or for the public purpose of the Commonwealth or for any of its agencies for purposes of Act 13 preference is recognized to the previous owners of the expropriated property or their heirs apparent to purchase it subject to the conditions established by the LA including the price which In no case can be less than the market price. In said case, said heirs must be*

> *previously notified before the LA can dispose of it, fact that this Court has not been placed in a position to determine whether it was neither done.*
>
> *Once the LA discharges its function by selling or transferring the expropriated land to other agencies, under the supposition that said transfer meets the purposes of Act 13, said lands are separate in title from the LA and go into the general patrimony of the Commonwealth. Once they form part of said patrimony by transfer of title and dominion in favor of the Commonwealth, or any of its agencies or instrumentalities, the provisions of Act 12 apply by the mere fact.*
>
> *Act 12 establishes the mechanisms whereby Commonwealth property that is not for public use may be disposed of or sold and establishes a preferred right in favor of the heirs of any person from whom said property has been expropriated in order for them to reacquire it at the price*[41] *at which the original title holder*[42] *of the same*[43] *has paid to purchase it.*
>
> *As a consequence, Act 12 applies to the land subject of this litigation which are in the possession of the GDB and which were offered to the highest bidder by the (notice of auction) if said lands lose their public use.*

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[41] Law 12, Article 9(a), 23 L.P.R.A. §31h(a), considering that the remnant in the hands of the GDB is undeveloped but without prejudice that in its day, should the undeveloped remnant of the Rosso Farm result benefited with some improvement in infrastructure that will be advantageous and useful, they will have to contribute proportionately to what the Commonwealth invested in the same.

[42] The Commonwealth.

[43] Law 12, 23 L.P.R.A. § 311c.

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> *The publication of the (auction notice) made by the GDB on August 21, 2000 determines the moment when the plaintiff's rights are activated under Act 12 with regards to the land included in said offer to the highest bidder. Considering that the complaint was filed October 30, 2000, we determine that the causes of action with regards to the claims against said party and against El Jardin have not prescribed under any provision of law and much less can be affected by the doctrine on negligence.*
>
> *[...]*
>
> *Having analyzed the documents submitted with the motions from the parties and after listening to their arguments during the hearing held October 19, 2004, we understand there a real controversy exists on whether the remnant of the Rosso Farm, which possession is held by the GDB, lacked public usefulness at the time of the referred publication of the RFB. This Court has not yet received the evidence necessary to determine if at the time when the different parcels that comprised the Rosso Farm were sold or intended to be sold throughout the years, they were subject to limitations that could justify a public use.*
>
> *In addition, we cannot determine either at this stage of the proceedings whether the portion of the Rosso Farm purchased by the GDB on December 30, 1997, by Deed number 12, before, or the remnant of the Rosso Farm which title is still held by the GDB were subject or affected by limitations of another kind that may be translated into or mean the public uses that motivated the* expropriation or any other public use and particularly ~~the~~

> moment when the GDB published the RFB on August 21, 2000 in order to dispose of the referred remnant of the Rosso Farm.

Up to here we have discussed all the errors presented before this illustrated Forum and we only have left some brief statements on the inappropriateness of the dismissal of the complaint by the CA. It is a clearly established rule in our legal system that when considering a motion for dismissal, one must examine the facts alleged in the complaint in the manner most favorable to the plaintiff appealed, and the dismissal is only proper **if, after taking the allegations as truth**, one cannot infer the granting of any remedy **under any state of facts that may be proven in support of its claim**. Jaime Andújar vs. Rivera Báez, 2002 T.S.P.R. 100, Pressure Vessels P.R. and Empire Gas P.R., 137 D.P.R. 497, 505 (1994); Agosto v. Mun. of Río Grande, 143 D.P.R. 174, 178 (1997), Unisys v. Ramallo, 128 D.P.R. 842, 858 (1991). (Our emphasis).

So then, from a mere reading of the Plaintiff-Petitioner's allegations it very clearly arises that the Court of Appeals could not have dismissed the action filed. Plaintiff-Petitioner alleged it had a preferred right to purchase over the Rosso Farm, either by virtue of Act 12 or Act 13 and it is clear that if these allegations are taken as truths which as a matter of fact the court must do when considering a motion for dismissal, it cannot be concluded that plaintiff was not entitled to any remedy under any facts she might prove in support of her claim.

IX. Prayer

IN WITNESS WHEREOF, Plaintiff-Petitioner respectfully prays of this Honorable Court to: (1) repeal the judgment of the appealed Appellate Court; (2) Confirm and give full effectiveness and validity in all its items to the judgments entered by the Court of First Instance which were subject of review by said Appellate Court; (3) Return and remit the case to the Court of First Instance for its subsequent handling pursuant to what has been provided in said judgments; (4) Impose sanctions on the parties resorted to before the Appellate

Court for their temerity in submitting frivolous recourses and to impose costs and attorneys' fees incurred by Plaintiff-Petitioner in the filing of this document. Finally we request that this Honorable Court order and provide any other remedy it deems proper under law.

RESPECTFULLY SUBMITTED, at San Juan, Puerto Rico, on May 12, 2005.

WE CERTIFY: Having sent, on this day, a true and exact copy of this document via certified mail to:

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Commonwealth of Puerto Rico
IN THE SUPREME COURT OF PUERTO RICO

CC-65-0427

CARMEN T. ROSSO
DESCARTES A/K/A
CARMEN
ROSSO DE IRIZARRY

Petitioner

Vs.

GOVERNMENT
DEVELOPMENT BANK
FOR PUERTO RICO;
LAND
ADMINISTRATION;
DEPARTMENT OF
TRANSPORTATION
AND PUBLIC WORKS;
DEPARTMENT OF
HOUSING; PLANNING
BOARD; REGULATIONS
AND
PERMITS
ADMINISTRATION;
AND OTHERS

Respondents

CE No.:

Proceeding from the
Court of Appeals
Panel Regional District
of Bayamón

KLCE200401540

CONSOLIDATED
WITH:

KLCE200500182
KLCE200500186
KLCE200500187

Proceeding from the
Court of First Instance,
Superior Part of
Bayamón
Civil No.
DAC2000-1263 (404)

Re:
Declaratory Judgment;
Recovery of Lands by
Preferred Right; Claim
for Compensation for
Damages; Nullity of
Judgment; Nullity of
Deeds and Contract

INDEX OF THE APPENDIXES

INTRODUCTORY NOTE:

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These appendixes are comprised of five (5) volumes corresponding to the consolidated recourses, including the briefs submitted in their respective appendixes and the Judgment which we appeal before this Honorable Court. To wit:

I. KLC 200500182, Certiorari of the Government Development Bank submitted on February 24, 2005.................................**Folios #01 through 36**
  a. Appendixes of KLCE 200500182............................**Folios #37 through 1105**

II. KLC 200500186, Certiorari of the Lands Administration submitted on February 24, 2005...**Folios #1106 through 1136**
  a. Appendixes of KLCE 200500186............................**Folios #1136 through 2078**

III. KLC 200500187, Certiorari of the Municipality of Bayamón submitted on February 24, 2005...**Folios #2079 through 2109**
  a. Appendixes of KLCE 200500182............................**Folios #2110 through 2496**

IV. KLC 200401540, Certiorari from ARPE, DTOP, Planning Board And the Commission for the Development of the Bayamón River ....
....
.......................**Folios #01 through 36**

V. Notice of Judgment and Judgment from the Court of Appeals

Bayamón Judicial Region Panel IV of March 31, 2005,

notified on April 13, 2005, Motion in Compliance with Order

related to Certiorari KLCE 2004-1540........................**Folios #2618 to 2684**

This appendix is very large, given the nature of attending four consolidated recourses. It is divided into five volumes identified with roman numerals (I through V) in their vertical columns. To ease the reading and locating of the documents entailed, we have prepared the following correlated **Table** of seven (7) columns. The first column identifies the document by alphabetical order. The second (**"Folio in Rosso Appendix"**) indicates the page where it appears in our appendix and in the volume indicated with the roman numerals. The next four columns indicate the page where this same document appears within the appendix itself of each one of the four recourses consolidated by the Appeals Court and indicate the number assigned to said document in the appendix of the corresponding recourse. The fifth column (V) only identifies the folio of our appendix where the Judgment of the Court of Appeals which we are appealing appears and its notice to each party by the Clerk of said Court.

That **Table**, therefore, may be used identifying each document by its name or description and located anywhere it appears joined to any of the consolidated recourses. It also helps to determine whether any of the appealed parties did not include it in their own recourse before the Appellate Court.

Some documents are repeated in the appendixes submitted by the parties, others were simply omitted. Therefor, we have provided a comment in said regards in each column in the cases where it is proper.

Document:	**Folio in Rosso Appendix**	**G.D.B. (I) KLCE 2005-0182**	**Lands (II) KLCE 2005-0186**	**Bayamón (III) KLCE 2005-0187**	**Agencies (IV) KLCE 2005-1540**	**Judgment (V)**
1 Certiorari of the Lands Administration submitted February 24, 2005 KCLE 2005-0186	**(I)** N/A **(II)** 1106-1136 **(III)** N/A **(IV)** N/A (V) N/A	N/A	N/A	N/A	N/A	N/A

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Document:	**Folio in Rosso Appendix**	**G.D.B. (I) KLCE 2005-0182**	**Lands (II) KLCE 2005-0186**	**Bayamón (III) KLCE 2005-0187**	**Agencies (IV) KLCE 2005-1540**	**Judgment (V)**
2 Certiorari of Government Development Bank submitted February 24, 2005 KCLE 2005-0182	**(I)** 1-36 **(II)** N/A **(III)** N/A **(IV)** N/A (V) N/A	N/A	N/A	N/A	N/A	N/A
3 Certiorari of Municipality of Bayamón submitted February 24, 2005 KCLE 2005-0187	**(I)** N/A **(II)** N/A **(III)** 2079-2109 **(IV)** N/A (V) N/A	N/A	N/A	N/A	N/A	N/A

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Document:	**Folio in Rosso Appendix**	**G.D.B. (I) KLCE 2005-0182**	**Lands (II) KLCE 2005-0186**	**Bayamón (III) KLCE 2005-0187**	**Agencies (IV) KLCE 2005-1540**	**Judgment (V)**
4 Certiorari of Planning Board, RPA, DTPW and Bayamón River Commission KCLE 2004-1540	**(I)** N/A **(II)** N/A **(III)** N/A **(IV)** 2497-2519 (V)	N/A	N/A	N/A	N/A	N/A
5 G.D.B.'s Answer to the Amended Complaint of May 30, 2003	**(I)** 151-209 **(II)** 1963-1987 **(III)** 2197-2221 **(IV)** N/A (V) N/A	115-172 Doc. #8	819-843 Doc. #18	69-93 Doc. #3	*Not included	N/A

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Document:	**Folio in Rosso Appendix**	**G.D.B. (I) KLCE 2005-0182**	**Lands (II) KLCE 2005-0186**	**Bayamón (III) KLCE 2005-0187**	**Agencies (IV) KLCE 2005-1540**	**Judgment (V)**
6 Municipality of Bayamón's Answer to the Amended Complaint of May 12, 2003	**(I)** 136-138 **(II)** Not included **(III)** 2369-2386 **(IV)** Not included (V) N/A	100-172 Doc. #6	*Not included	241-258 Doc. #9	*Not included	N/A

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Document:	**Folio in Rosso Appendix**	**G.D.B. (I) KLCE 2005-0182**	**Lands (II) KLCE 2005-0186**	**Bayamón (III) KLCE 2005-0187**	**Agencies (IV) KLCE 2005-1540**	**Judgment (V)**
7 Lands Administration of PR's Answer to the Amended Complaint, May 15, 2003	**(I)** 139-150 **(II)** 1988-1999 **(III)** Not included **(IV)** Not Included (V) N/A	103-114 Doc. #7	844-855 Doc. #19	***Not included**	***Not included**	N/A
8 Answer to the Amended Complaint, by Hon. Norma Burgos Andújar, Carlos Pesquera, Carlos J. Vivoni,	**(I)** 1007-1017 **(II)** 1946-1962 **(III)** Not included **(IV)** Not Include	971-981 Doc. #28	802-818 Doc. #7	***Not included**	***Not included**	N/A

Jorge Pierluisi Díaz, José R. Caballero and Ana Carmen Alemany of June 15, 2004	d (V) N/A					
9 Answer to the Amended Complaint by Lourdes M. Rovira, August 25, 2003	**(I)** 566-589 **(II)** 1922-1945 **(III)** Not included **(IV)** Not Included (V) N/A	530-553 Doc. #12	7784-801 Doc. #14	***Not included**	***Not included**	N/A

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Document:	**Folio in Rosso Appendix**	**G.D.B. (I) KLCE 2005-0182**	**Lands (II) KLCE 2005-0186**	**Bayamón (III) KLCE 2005-0187**	**Agencies (IV) KLCE 2005-1540**	**Judgment (V)**
10 Answer to the Amended Complaint by Marcos Rodríguez Emma, August 25, 2003	**(I)** 542-565 **(II)** 1898-1921 **(III)** Not included **(IV)** Not Included (V) N/A	506-529 Doc. #11	754-777 Doc. #15	***Not included**	***Not included**	N/A

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11 Answer to the Amended Complaint by Shabas Corporation and DIS Corporation, of October 14, 2003	**(I)** 640-641 **(II)** 1896-1897 **(III)** Not included **(IV)** Not Included (V) N/A	604-605 Doc. #14	752-753 Doc. #12	***Not included**	***Not included**	N/A
12 Answer to the Amended Complaint presented by Third Development, Inc., January 7, 2004	**(I)** 943-983 **(II)** Not included **(III)** Not included **(IV)** Not Included (V) N/A	907-947 Doc. #23	***Not included**	***Not included**	***Not included**	N/A

13 Answer to the Amended Complaint El Jardin de Río Piedras, Inc., October 13, 2003	**(I)** 590-639 **(II)** 1846-1895 **(III)** 2266-2315 **(IV)** Not Included (V) N/A	554-603 Doc. #13	702-751 Doc. #13	138-187 Doc. #6	***Not included**	N/A

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Document:	**Folio in Rosso Appendix**	**G.D.B. (I) KLCE 2005-0182**	**Lands (II) KLCE 2005-0186**	**Bayamón (III) KLCE 2005-0187**	**Agencies (IV) KLCE 2005-1540**	**Judgment (V)**
14 Answer to the Complaint presented by defendant, G.D.B. of April 18, 2001	**(I)** 91-93 **(II)** Not included **(III)** Not included **(IV)** Not Included (V) N/A	55-57 Doc. #4	***Not included**	***Not included**	***Not included**	N/A
15 Amended Complaint filed by plaintiff March 10, 2003	**(I)** 94-1359 **(II)** 2000-2078 **(III)** 2136-2196 **(IV)** 2520-2595 (V) N/A	58-99 Doc. #5 *Does not include appendixes.	856-934 Doc. #20	27-687 Doc. #2	1-76 Doc #1	N/A

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16 Rejoinder to Answer to Motions related to Multiple Consolidated Motion filed by the G.D.B. December 10, 2003	**(I)** 916-921 **(II)** Not included **(III)** Not included **(IV)** Not Included (V) N/A	880-885 Doc. #20	***Not included**	***Not included**	***Not included**	N/A
17 Plaintiff's Multiple Consolidated Motion of November 21, 2003	**(I)** 642-879 **(II)** 1268-1509 **(III)** 2316-2357 **(IV)** Not Included (V) N/A	606-843 Doc. #15	130-368 Doc. #11	188-229 Doc. #7	***Not included**	N/A

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Document:	**Folio in Rosso Appendix**	**G.D.B. (I) KLCE 2005-0182**	**Lands (II) KLCE 2005-0186**	**Bayamón (III) KLCE 2005-0187**	**Agencies (IV) KLCE 2005-1540**	**Judgment (V)**
18 Motion in Compliance of Order re: Certiorari KCLE 2004-1540 filed February 28, 2005	**(I)** N/A **(II)** N/A **(III)** N/A **(IV)** N/A (V) 2650-2684	N/A	N/A	N/A	N/A	2650-2684

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19 Motion for Dismissal filed by the Lands Administration, the Regulations and Permits Administration, Housing Department, Transportation and Public Works Department, and the Bayamón River Commission, of March 19, 2004	**(I)** 986-994 **(II)** Not included **(III)** Not included **(IV)** 2596-2604 (V) N/A	950-958 Doc. #25	***Not included**	***Not included**	77-85 Doc #2	N/A

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20 Motion for Extension of Time to submit answer to the First Set of Interrogatories of the Commonwealth, the Planning Board, Housing, TPWD, RPA and Bayamón River Commission of February 1, 2005	**(I)** Not included **(II)** 1146-1148 **(III)** Not included **(IV)** 2596-2604 (V) N/A	***Not included**	***Not included**	10-12 ***Not included in the Appendix' Index**	***Not included**	N/A

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Document:	**Folio in Rosso Appendix**	**G.D.B. (I) KLCE 2005-0182**	**Lands (II) KLCE 2005-0186**	**Bayamón (III) KLCE 2005-0187**	**Agencies (IV) KLCE 2005-1540**	**Judgment (V)**
21 G.D.B.'s Motion for Extension of Time to Answer Multiple Consolidated Motion filed by plaintiff, of December 1, 2003	**(I)** 880-881 **(II)** 1266-1267 **(III)** Not included **(IV)** Not Included (V) N/A	844-845 Doc. #16	128-129 Doc. #10	***Not included**	***Not included**	N/A

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22 Motion for Rec. from Commonwealth Agencies of October 13, 2004	**(I)** Not included **(II)** Not included **(III)** Not included **(IV)** 2609-2612 (V) N/A	***Not included**	***Not included**	***Not included**	**90-93 Doc #4**	N/A
23 G.D.B.'s Motion for Partial Summary Judgment of July 29, 2003	**(I)** 203-396 **(II)** 1658-1845 **(III)** 2222-2224 **(IV)** Not included (V) N/A	173-360 Doc. #9	514-701 Doc. #17	84-114 Doc. #4	***Not included**	N/A

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24 Motion from the Municipality of Bayamón pursuant to Rule 43.3 of Civil Procedure February , 2005	**(I)** 1100-1105 **(II)** 1140-1145 **(III)** 2488-2493 **(IV)** Not included (V) N/A	1064-1069 Doc. #32	4-9 Doc. #2	360-365 Doc. #14	***Not included**	N/A

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Document:	**Folio in Rosso Appendix**	**G.D.B. (I) KLCE 2005-0182**	**Lands (II) KLCE 2005-0186**	**Bayamón (III) KLCE 2005-0187**	**Agencies (IV) KLCE 2005-1540**	**Judgment (V)**
25 Motion in Opposition presented by plaintiff, March 23, 2004	**(I)** 995-1002 **(II)** Not included **(III)** Not included **(IV)** Not Included (V) N/A	959-966 Doc. #26	***Not included**	***Not included**	***Not included**	N/A

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26 Motion to Stop Discovery of Evidence with respect to G.D.B. until the Motion for Partial Summary Judgment filed by G.D.B. is resolved, March 3, 2004	**(I)** 984-985 **(II)** Not included **(III)** Not included **(IV)** Not Included (V) N/A	948-949 Doc. #24	***Not included**	***Not included**	***Not included**	N/A
27 Motion to Join G.D.B.'s Motion for Partial Summary Judgment from the Lands Administration of Puerto Rico filed October 19, 1004	**(I)** 1097-1099 **(II)** 1186-1188 **(III)** Not included **(IV)** Not Included (V) N/A	1061 - 1063 Doc. #31	48-50 Doc. #5	***Not included**	***Not included**	N/A

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Document:	**Folio in Rosso Appendix**	**G.D.B. (I) KLCE 2005-0182**	**Lands (II) KLCE 2005-0186**	**Bayamón (III) KLCE 2005-0187**	**Agencies (IV) KLCE 2005-1540**	**Judgment (V)**
28 Motion Requesting Annotation of Injunction and Prohibition to Sell filed by plaintiff, Carmen T. Rosso Descartes, on October 31, 2000	**(I)** 79-90 **(II)** Not included **(III)** Not included **(IV)** Not Included (V) N/A	43-54 Doc. #3	***Not included**	***Not included**	***Not included**	N/A

29 Motion Requesting Dismissal and/or Summary Judgment from Jardin de Río Piedras, Inc., on August 14, 2003	**(I)** 397-541 **(II)** 1510-1657 **(III)** 2243-2265 **(IV)** Not included (V) N/A	361-505 Doc. #10	369-513 Doc. #16	115-137 Doc. #5	***Not included**	N/A
30 Motion Requesting Dismissal of the Complaint with respect to ex-Mayor Ramón Luis Rivera filed by the Municipality of Bayamón, December 22, 2003	**(I)** 922-932 **(II)** Not included **(III)** Not included **(IV)** Not Included (V) N/A	886-896 Doc. #21	***Not included**	***Not included**	***Not included**	N/A

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Document:	**Folio in Rosso Appendix**	**G.D.B. (I) KLCE 2005-0182**	**Lands (II) KLCE 2005-0186**	**Bayamón (III) KLCE 2005-0187**	**Agencies (IV) KLCE 2005-1540**	**Judgment (V)**
31 Motion requesting acceptance Motion Pursuant to Rule 43.3 of Civil Procedure as a Reconsideration filed by the Municipality of Bayamón, February 16, 2005	**(I)** Not included **(II)** 1137-1139 **(III)** 2494-2496 **(IV)** Not Included (V) N/A	***Not included**	1-2 Doc. #1	366-368 Doc. #15	***Not included**	N/A

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32 Motion Requesting Permission to Amend Answer to Amended Complaint and including Answer to Amended Complaint filed by the Municipality of Bayamón, December 4, 2003	**(I)** 1040-1096 **(II)** 1189-1245 **(III)** 2397-2453 **(IV)** Not Included (V) N/A	1004-1060 Doc. #30	***Not included**	***Not included**	***Not included**	N/A
33 Motion Requesting Summary Judgment of the Municipality of Bayamón, February 16, 2005	**(I)** 1040-1096 **(II)** 1189-1245 **(III)** 2397-2453 **(IV)** Not Included (V) N/A	1004-1060 Doc. #30	51-107 Doc. #6	269-325 Doc. #11	***Not included**	N/A

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Document:	**Folio in Rosso Appendix**	**G.D.B. (I) KLCE 2005-0182**	**Lands (II) KLCE 2005-0186**	**Bayamón (III) KLCE 2005-0187**	**Agencies (IV) KLCE 2005-1540**	**Judgment (V)**
34 Notices: Judgment Court of Appeals Judicial Region of Bayamón VI Panel of March 31 2005 notified April 13, 2005.	**(I)** N/A **(II)** N/A **(III)** N/A **(IV)** N/A (V) 2642-2649	N/A	N/A	N/A	N/A	2642-2649 Doc. #2

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35 Notice and Resolution Court of Appeals re: Petition for Certiorari KLCE 2005-1540	**(I)** 2616-2517 **(II)** Not included **(III)** Not included **(IV)** Not included (V) N/A	***Not included**	***Not included**	***Not included**	**Not enumerated or in the index of the appendix**	N/A
36 G.D.B.'s Opposition to Multiple Consolidated Motion of December 31, 2003	**(I)** 933-949 **(II)** 1246-1255 **(III)** 2387-2396 **(IV)** Not Included (V) N/A	897-906 Doc. #22	108-116 Doc. #8 In Appendix index they omit p. 117	259-268 Doc. #10	***Not included**	N/A

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37 Opposition to Motions for Dismissal and Reconsideration filed by plaintiff August 2, 2004	**(I)** 1018-1039 **(II)** Not included **(III)** Not included **(IV)** Not Included (V) N/A	982-987 Doc. #29	***Not included**	***Not included**	***Not included**	N/A

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Document:	**Folio in Rosso Appendix**	**G.D.B. (I) KLCE 2005-0182**	**Lands (II) KLCE 2005-0186**	**Bayamón (III) KLCE 2005-0187**	**Agencies (IV) KLCE 2005-1540**	**Judgment (V)**
38 Court Order of September 3, 2004 (Dismissed Request for Dismissal from RPA, TPWD, Housing and Bayamón River Commission)	**(I)** Not included **(II)** Not included **(III)** Not included **(IV)** 2605-2608 (V) N/A	***Not included**	***Not included**	***Not included**	86-89 Doc. #3	N/A

39 Court Order of October 29, 2004 (Dismissed Motion for Reconsideration from RPA, TPWD, Housing and Bayamón River Commission)	**(I)** Not included **(II)** Not included **(III)** Not included **(IV)** 2613-2615 (V) N/A	***Not included**	***Not included**	***Not included**	94-96 Doc. #5	N/A
40 Reply to Motion in Opposition filed by G.D.B. April 2, 2004	**(I)** 1003-1006 **(II)** Not included **(III)** Not included **(IV)** Not Included (V) N/A	967-970 Doc. #27	***Not included**	***Not included**	***Not included**	N/A

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41 Reply to Motions Related to Multiple Consolidated Motion filed by plaintiff December 5, 2003	**(I)** 913-915 **(II)** Not included **(III)** Not included **(IV)** Not Included (V) N/A	877-879 Doc. #19	***Not included**	***Not included**	***Not included**	N/A

Document:	**Folio in Rosso Appendix**	**G.D.B. (I) KLCE 2005-0182**	**Lands (II) KLCE 2005-0186**	**Bayamón (III) KLCE 2005-0187**	**Agencies (IV) KLCE 2005-1540**	**Judgment (V)**
42 El Jardin de Río Piedras, Inc.'s reply to plaintiff's Multiple Consolidated Motion opposing its request for Dismissal and/or Summary Judgment filed by El Jardin de Río Piedras December 2, 2003	**(I)** 882-891933-949 **(II)** 12561-1265 **(III)** 2358-2368 **(IV)** Not Included (V) N/A	847-855 Doc. #17	118-127 Doc. #9	230-240 Doc. #8	***Not included**	N/A

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43 Resolution issued by the Court of First Instance Superior Part of Bayamón, dismissing Motion for Partial Summary Judgment of the G.D.B., January 18, 2005, filed in the record January 25, 2005	**(I)** 37-52 **(II)** 1149-1166 **(III)** 2473-2487 **(IV)** Not Included (V) N/A	1-16 Doc. #1	14-28 Doc. #3	345-359 Doc. #13	***Not included**	N/A

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44 Resolution of the Court Dismissing Request for Summary Judgment of Jardin del Río Piedras, Inc. of January 18, 2005, filed in record January 25, 2005	**(I)** Not included **(II)** 1167-1185 **(III)** 2454-2472 **(IV)** Not Included (V) N/A	***Not included**	29-47 Doc. #4	326-344 Doc. #12	***Not included**	N/A

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Document:	**Folio in Rosso Appendix**	**G.D.B. (I) KLCE 2005-0182**	**Lands (II) KLCE 2005-0186**	**Bayamón (III) KLCE 2005-0187**	**Agencies (IV) KLCE 2005-1540**	**Judgment (V)**
45 Judgment Court of Appeals Judicial Region of Bayamón VI Panel of March 31, 2005	**(I)** N/A **(II)** N/A **(III)** N/A **(IV)** N/A (V) 2618-2641	N/A	N/A	N/A	N/A	2618-2641 Doc. #1

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46 Request for Declaratory Judgment and Injunction requested by plaintiff, Carmen T. Rosso Descartes, October 31, 2000	**(I)** 53-78 **(II)** 2049-2055 **(III)** 2110-2135 **(IV)** Not Included (V) N/A	17-42 Doc. #2	905-911 Doc. #21 Doc. is within amended complaint doc.	1-26 Doc. #1	***Not included**	N/A

No.: 2006-368 CERTIFICATE OF TRANSLATOR

I, Mayra Cardona Durán, of legal age, single, resident of Guaynabo, Puerto Rico, Certified Interpreter of the United States District Court and certified member of the National Association of Judiciary Interpreters and Translators, and admitted to the Puerto Rico Bar Association, hereby CERTIFY: that according to the best of my knowledge and abilities, the foregoing is a true and faithful rendering into English of the original Spanish text which I have translated and it is stamped and sealed as described herein. This document is comprised of Thirty Seven (37) pages, including this certification page, and does not contain changes or erasures.

In Guaynabo, Puerto Rico, today, Thursday, April 27, 2006.

Lcda. Mayra Cardona
United States Courts Certified Interpreter
NAJIT Certified Interpreter & Translator
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